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THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1997 CUMULATIVE SUPPLEMENT

Volume 12

Chapters 75 through 89F

Prepared under the supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 486 S.E.2d 626. For complete scope of annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

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Preface

This Cumulative Supplement to Volume 12 contains the general laws of a permanent nature enacted by the General Assembly through the 1997 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

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Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1997 Regular Session affecting Chapters 75 through 89F of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 344, p. 732.
North Carolina Court of Appeals Reports through Volume 123, p. 790.
South Eastern Reporter 2nd Series through Volume 486, p. 626.
Federal Reporter 3rd Series through Volume 116, p. 875.
Federal Supplement through Volume 965, p. 1486.
Federal Rules Decisions through Volume 172, p. 600.
Bankruptcy Reports through Volume 209, p. 549.
Supreme Court Reporter through Volume 117, p. 1864.
North Carolina Law Review through Volume 75, p. 1088.
Wake Forest Law Review through Volume 32, p. 217.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

The General Statutes of North Carolina
1997 Cumulative Supplement

VOLUME 12

Chapter 75.

Monopolies, Trusts and Consumer Protection.

Article 1.

General Provisions.

Sec.
75-2.1. Monopolizing and attempting to monopolize prohibited.
75-5 through 75-7. [Repealed.]

Article 3.

Motor Fuel Marketing Act.

Sec.
75-81. Definitions.

ARTICLE 1.

General Provisions.

§ 75-1. Combinations in restraint of trade illegal.

CASE NOTES

I. General Consideration.
IV. Pleading and Practice.

I. GENERAL CONSIDERATION.

Federal precedent is instructive in interpreting Chapter 75 due to the similarity between provisions of Chapter 75 and the federal antitrust law. N.C. Steel, Inc. v. National Council on Comp. Ins., 123 N.C. App. 163, 472 S.E.2d 578 (1996).

Agreement Not to Sell to Particular Individual. —

Where the duration of the restraint is limited as to time, the mere length of the period of time during which the restraint is to operate, standing alone, is never sufficient to render the restrictive covenant not to compete ipso facto unenforceable. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

Cited in N.C. Steel, Inc. v. National Council on Comp. Ins., 123 N.C. App. 163, 472 S.E.2d 578 (1996); Nursing Registry v. Eastern North Carolina Regional Emergency Medical Services Consortium, Inc., 959 F. Supp. 298 (E.D.N.C. 1997).

IV. PLEADING AND PRACTICE.

Opinion Testimony from Dealers. — Where in the prosecution for violation of former 75-5(b)(3) the State was allowed to introduce the testimony of coal dealers in the same city as to the cost of handling coal, the opinion testimony being based upon complicated and detailed facts relating to costs of buying, shipping, trucking, handling, shrinkage, labor, repairs, etc., the witnesses having had years of experience in operating their respective businesses in the city, it was held that the witnesses were experts and their opinion testimony was competent and was properly received in evidence. State v. Atlantic Ice & Coal Co., 210 N.C. 742, 188 S.E. 412 (1936).

An agreement that a retailer should handle a certain product upon condition that he should not

sell like products of other manufacturers within the same price range was prohibited by former G.S. 75-5. Florsheim Shoe Co. v. Leader Dep't Store, Inc., 212 N.C. 75, 193 S.E. 9 (1937).

§ 75-1.1. Methods of competition, acts and practices regulated; legislative policy.

CASE NOTES

I. General Consideration.
II. Trade or Commerce.
III. Unfair and Deceptive Acts.
  A. In General.
  B. Illustrative Cases.
IV. Pleading and Practice.

I. GENERAL CONSIDERATION.

Legislative Intent of 1977 Amendment. — The courts have interpreted the legislature's action in 1977 of deleting the limiting language of "dealings within the state" as a desire expand the scope of this section to the limits of North Carolina's long-arm statute. Broussard v. Meineke Disct. Muffler Shops, Inc., 945 F. Supp. 901 (W.D.N.C. 1996).

Breach of Contract Alone Is Insufficient. — Although a mere breach of contract does not constitute a violation of this section, a breach accompanied with aggravating circumstances, such as an intentional misrepresentation made for the purpose of deceiving another and which has the natural tendency to injure another, can violate the statute. Baldine v. Furniture Comfort Corp., 956 F. Supp. 580 (M.D.N.C. 1996).

To establish a prima facie claim for unfair trade practices, the plaintiff must show: (1) defendant committed an unfair or deceptive act or practice, (2) the action in question was in or affecting commerce, and (3) the act proximately caused injury to the plaintiff. Pleasant Valley Promenade v. Lechmere, Inc., 120 N.C. App. 650, 464 S.E.2d 47 (1995).

Three-Pronged Test. — In order to establish a violation of this section, a plaintiff must meet a three-pronged test: there must be a showing of an unfair or deceptive act or practice, or an unfair method of competition; in or affecting commerce; and proximately causing actual injury to the plaintiff. Peterson v. Bozzano, 183 Bankr. 735 (Bankr. M.D.N.C. 1995).

Construction with Other Provisions. — Violation of any form of conduct listed in § 58-63-15 operates as a per se instance of unfair and deceptive trade practice under this section. Murray v. Nationwide Mut. Ins. Co., 123 N.C. App. 1, 472 S.E.2d 358 (1996).

As an agency of the State, a city may not be sued under Chapter 75. Rea Constr. Co. v. City of Charlotte, 121 N.C. App. 369, 465 S.E.2d 342 (1996).

Section Inapplicable to Foreign Injuries with Negligible Effect on North Carolina Commerce. —

To state a claim for an unfair or deceptive trade practice in or affecting commerce which would fall within the reach of this section, plaintiff must allege a substantial effect on in-state business operations. Merck & Co. v. Lyon, 941 F.Supp. 1443 (M.D.N.C. 1996).

Egregious or Aggravating Circumstance Required. —

A mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under the Unfair and Deceptive Trade Practices Act. The plaintiff must demonstrate substantial aggravating circumstances attending the breach. Canady v. Crestar Mtg. Corp., 109 F.3d 969 (4th Cir. 1997).

Treble Damages Required and Attorney's Fees Permissible. — If the trial court finds that a defendant has violated the Unfair and Deceptive Trade Practices Act, it must award treble damages, and it may, in its discretion, award attorney's fees. Canady v. Crestar Mtg. Corp., 109 F.3d 969 (4th Cir. 1997).

Rental of residential property including a house and a trailer space was "in or affecting commerce" for the purposes of liability under this section for unfair or deceptive trade practices. Stolfo v. Kernodle, 118 N.C. App. 580, 455 S.E.2d 869 (1995).

Sale of Personal Residence. — In order to avoid liability under this section, a defendant must fit under one of the statutory exemptions or the "homeowner's exemption" for a private homeowner selling his or her personal residence recognized by the Court of Appeals. Stolfo v. Kernodle, 118 N.C. App. 580, 455 S.E.2d 869 (1995).

Evidence of negligence, good faith, or lack of intent are not defenses to an action under this section. Murray v. Nationwide Mut. Ins. Co., 123 N.C. App. 1, 472 S.E.2d 358 (1996).

Who Are Protected. —

The private homeowner's exemption continues to exist. Davis v. Sellers, 115 N.C. App. 1, 443 S.E.2d 879 (1994), cert. denied, 339 N.C. 610, 454 S.E.2d 248 (1995).

Applied in Ace Chem. Corp. v. DSI Transps., Inc., 115 N.C. App. 237, 446 S.E.2d 100 (1994); Pleasant Valley Promenade v. Lechmere, Inc., 120 N.C. App. 650, 464 S.E.2d 47 (1995); Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995); Carlson v. Branch Banking & Trust Co., 123 N.C. App. 306, 473 S.E.2d 631 (1996).

Cited in Martin Marietta Corp. v. Wake Stone Corp., 339 N.C. 602, 453 S.E.2d 146 (1995); McNeil-PPC, Inc. v. Granutec, Inc., 919 F. Supp. 198 (E.D.N.C. 1995); Henderson v. United States Fid. & Guar. Co., 124 N.C. App. 103, 476 S.E.2d 459 (1996); N.C. Steel, Inc. v. National Council on Comp. Ins., 123 N.C. App. 163, 472 S.E.2d 578 (1996); Richardson v. BP Oil Co., 124 N.C. App. 509, 477 S.E.2d 686 (1996); Helms v. Holland, 124 N.C. App. 629, 478 S.E.2d 513 (1996); G.P. Publications, Inc. v. Quebecor Printing - St. Paul, Inc., 125 N.C. App. 424, 481 S.E.2d 674 (1997); Broussad v. Meineke Discount Muffler Shops, Inc., W.D.N.C., 958 F. Supp 1087 (1997).

II. TRADE OR COMMERCE.

Applicability. — This section applies if the plaintiff alleges a substantial injurious effect on plaintiff's business operations in North Carolina. Broussard v. Meineke Disct. Muffler Shops, Inc., 945 F. Supp. 901 (W.D.N.C. 1996).

The federal Copyright Act preempts any legal or equitable right under state law which is "equivalent" to any of the exclusive rights within the general scope of copyright, so that state law could not in fact make copyright infringement a violation of this act. Nintendo of Am., Inc. v. Aeropower Co., 34 F.3d 246 (4th Cir. 1994).

Referral Fee. — Although persons selling their own private residence are exempt from Chapter 75 liability, where defendant's wife received a referral fee, defendants' transaction was within the scope of this section. Davis v. Sellers, 115 N.C. App. 1, 443 S.E.2d 879 (1994), cert. denied, 339 N.C. 610, 454 S.E.2d 248 (1995).

Sale of Van. — Defendants violated this section and § 20-71.4 when they did not give plaintiffs a written damage disclosure statement that the van had been involved in a collision to the extent that the cost of the van's repairs exceeded twenty-five percent of its fair market retail value. Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

Use of Hidden Cameras for Television Show. — Employees of broadcast television network who secured employment with food store chain in order to wear hidden cameras to tape store practices for "Prime Time Live" network news show were engaged in conduct that was "affecting commerce" and the Unfair and Deceptive Trade Practices Act might apply. Food Lion, Inc. v. Capital Cities/ABC, Inc., 951 F. Supp. 1224 (M.D.N.C. 1996).

III. UNFAIR AND DECEPTIVE ACTS.

A. In General.

Claims for unfair and deceptive trade practices are not assignable. Horton v. New S. Ins. Co., 122 N.C. App. 265, 468 S.E.2d 856, cert. denied, — N.C. —, 472 S.E.2d 8 (1996).

Failure to Disclose Unenforceable Lien. — The failure of the seller of a boat to disclose the existence of a lien on the boat of which the seller had knowledge at the time but correctly believed to be invalid and unenforceable, constituted a violation of the act. Standing v. Midgett, 850 F. Supp. 396 (E.D.N.C. 1993).

Fraud, Bad Faith and Intentional Misrepresentations Not Required. — Whether an act or practice is unfair or deceptive is to be determined by all the facts and circumstances surrounding the transaction; a plaintiff under this section is not required to show fraud, bad faith or intentional misrepresentation. Peterson v. Bozzano, 183 Bankr. 735 (Bankr. M.D.N.C. 1995).

Breach of Contract. —

A mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under this section; rather, substantial aggravating circumstances attendant to the breach must be shown. Computer Decisions, Inc. v. Rouse Office Mgt. of N.C., Inc., 124 N.C. App. 383, 477 S.E.2d 262 (1996).

North Carolina does not recognize a cause of action against the insurance company of an adverse party based on unfair and deceptive trade practices under this section. Wilson v. Wilson, 121 N.C. App. 662, 468 S.E.2d 495 (1996).

A private right of action under this section and § 58-63.15 may not be asserted by a third-party claimant against the insurer of an adverse party. Wilson v. Wilson, 121 N.C. App. 662, 468 S.E.2d 495 (1996).

B. Illustrative Cases.

Allegation of Misrepresentation Sufficient to Maintain Claim. — Claim in complaint that defendant continuously misrepresented its position, by leading the plaintiff to believe the defendant was guarantor on note, and held all the rights and obligations associated with being a guarantor, was sufficiently stated to survive a motion to dismiss. A.C. Monk & Co. v. UBAF Arab American Bank, 875 F. Supp. 311 (E.D.N.C. 1995).

Automobile Sales. —

Where defendant, by its employee, made statements to the plaintiff that led the plaintiff to believe auto had not been wrecked, these statements were material to the parties' transaction and mislead the plaintiff into purchasing the auto, and were an unfair trade practice. Torrance v. AS & L Motors, Ltd., 119 N.C. App. 552, 459 S.E.2d 67 (1995).

False Representation as to Condition of Car. —

Defendants committed unfair and deceptive trade practices where car sold by defendants was severely structurally damaged, was not safe to operate, and plaintiff was misled by defendants into believing otherwise. Huff v. Autos Unlimited, Inc., 124 N.C. App. 410, 477 S.E.2d 86 (1996).

Failure to Maintain Dwellings. — Where plaintiff failed to maintain dwellings in a safe, fit, and habitable condition and subsequently made demands for payment of rent, his actions constituted an unfair and deceptive trade practice. Creekside Apts. v. Poteat, 116 N.C. App. 26, 446 S.E.2d 826, cert. denied, 338 N.C. 308, 451 S.E.2d 632 (1994).

Damages Award Justified. —

The court's entry of judgments against manufacturer for treble damages on claim under this section and against seller for breach of implied warranty combined with the order that manufacturer fully indemnify seller allowed plaintiff double recovery. Barbee v. Atlantic Marine Sales & Serv., Inc., 115 N.C. App. 641, 446 S.E.2d 117 (1994).

Conduct Not Amounting to Unfair Trade Practice. —

In action instituted by boatyard claiming a maritime lien on defendant vessel, where defendants alleged as their second counterclaim that plaintiff engaged in a practice where it would "lure" boat owners into its marina and charge excessively for services rendered, and if those owners refused to pay the bill, plaintiff would threaten seizure and sale of the vessel, defendants failed to show the existence of an act or practice concerning plaintiff's business policies that rose to the appellation "unfair" or "deceptive"; the "threats" of claiming a maritime lien or "papering" any vessel are exercises of valid rights of the plaintiff to assure payment for any services actually performed. Marlen C. Robb & Son Boatyard & Marina, Inc. v. Vessel Bristol, 893 F. Supp. 526 (E.D.N.C. 1994).

Where plaintiff, a graphic artist, had done work on an illustrated city map made by defendant, and where the relationship between the parties deteriorated to the point that a new artist was hired to complete an updated version of the map, as defendant had a copyright in the artwork, his hiring of another artist and his omission of plaintiff's name from the attribution bullet on the map did not amount to an unfair or deceptive trade practice. Armento v. Laser Image, Inc., 950 F. Supp. 719 (W.D.N.C. 1996).

Refusal to pay interest on money did not rise to the level of immoral, unethical, oppressive, unscrupulous, or injurious trade practices where bank inadvertently canceled deed of trust and offered to refund the purchase price without interest, as the bank's decision to wait until the bankruptcy trustee decided whether the deed of trust was valid was reasonable. Canady v. Crestar Mtg. Corp., 109 F.3d 969 (4th Cir. 1997).

Location of Account. — Although none of named plaintiffs had a franchise in North Carolina, where plaintiffs alleged breach of fiduciary duty by the defendants regarding the daily administration of a North Carolina account which franchisees paid into, the wrong occurred in North Carolina and plaintiffs alleged facts sufficient to withstand summary judgment. Broussard v. Meineke Disct. Muffler Shops, Inc., 945 F. Supp. 901 (W.D.N.C. 1996).

Violation of Uniform Fiduciaries Act. — Bank's violation of § 32-9 of the Uniform Fiduciaries Act was held not to constitute an unfair or deceptive trade practice where the breach of fiduciary duty was committed by a trustee, and there was an absence of actual knowledge or bad faith by the bank. Moretz v. Miller, — N.C. App. —, 486 S.E.2d 85 (1997).

IV. PLEADING AND PRACTICE.

Trebling of Damages. —

Once a plaintiff has established the right to recover under this section, the award of treble damages pursuant to § 75-16 is automatic and not discretionary. Peterson v. Bozzano, 183 Bankr. 735 (Bankr. M.D.N.C. 1995).

§ 75-2. Any restraint in violation of common law included.

CASE NOTES

Cited in Nursing Registry v. Eastern North Carolina Regional Emergency Medical Services Consortium, Inc., 959 F. Supp. 298 (E.D.N.C. 1997).

§ 75-2.1. Monopolizing and attempting to monopolize prohibited.

It is unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce in the State of North Carolina. (1995 (Reg. Sess., 1996), c. 550, s. 1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 550, s. 4 made this section effective October 1, 1996, and applicable to civil actions filed on or after that date.

§ 75-4. Contracts to be in writing.

§§ 75-5 through 75-7: Repealed by Session Laws 1995 (Regular Session, 1996), c. 550, s. 2, effective October 1, 1996.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 550, s. 3, provides in part that the repeal of G.S. 75-5 is not intended to render conduct lawful that violates the provisions of any other section of Chapter 75 of the General Statutes.

CASE NOTES

Cited in Nursing Registry v. Eastern North Carolina Regional Emergency Medical Services Consortium, Inc., 959 F. Supp. 298 (E.D.N.C. 1997).

§ 75-8. Continuous violations separate offenses.

CASE NOTES

Applied in Medicare Rentals, Inc. v. Advanced Servs., 119 N.C. App. 767, 460 S.E.2d 361 (1995).

§ 75-16. Civil action by person injured; treble damages.

Legal Periodicals. —

For article, "North Carolina's New Punitive Damages Statute: Who's Being Punished, Anyway?," see 74 N.C.L. Rev. 2174 (1996).

CASE NOTES

I. In General.
III. Damages.

I. IN GENERAL.

Legislative Intent. —

By enacting the 1969 revisions to this section, the General Assembly clearly intended to expand the class of persons with standing to sue for a violation of Chapter 75 to include any person who suffers an injury under Chapter 75, regardless of whether that person purchased directly from the wrongdoer. Hyde v. Abbott Labs., Inc., 123 N.C. App. 572, 473 S.E.2d 680 (1996).

Standing of Consumer. — This section allows a suit by an indirect purchaser; thus, consumers who did not buy infant formula directly from the manufacturer had standing to sue. Hyde v. Abbott Labs., Inc., 123 N.C. App. 572, 473 S.E.2d 680 (1996).

Accrual of Action. — A cause of action for unfair and deceptive trade practices under this section accrues when the right to institute and maintain a suit arises, or when the violation occurs. Hinson v. United Fin. Servs., Inc., 123 N.C. App. 469, 473 S.E.2d 382 (1996).

Postjudgment Interest. — This section provides for postjudgment interest on judgments for money damages generally, including a judgment for treble damages, until the judgment is paid. Custom Molders, Inc. v. American Yard Prods., Inc., 342 N.C. 133, 463 S.E.2d 199 (1995).

Violation of Federal Copyright Law. — The treble damages provision only authorizes the trebling of actual damages found to have resulted from violations of the Unfair and Deceptive Trade Practice Act. It does not purport to authorize trebling of either actual or statutory damages found recoverable for parallel violations of federal copyright law. Nintendo of Am., Inc. v. Aeropower Co., 34 F.3d 246 (4th Cir. 1994).

Cited in Isenhour v. Universal Underwriters Ins. Co., 341 N.C. 597, 461 S.E.2d 317 (1995); Broussad v. Meineke Discount Muffler Shops, Inc., W.D.N.C., 958 F. Supp 1087 (1997).

III. DAMAGES.

Damages assessed pursuant to § 75-1.1, etc. —

Once a plaintiff has established the right to recover under § 75-1.1, the award of treble damages pursuant to this section is automatic and not discretionary. Peterson v. Bozzano, 183 Bankr. 735 (Bankr. M.D.N.C. 1995).

Claim based on the Debt Collection Act will not support punitive damages. Holloway v. Wachovia Bank & Trust Co., 339 N.C. 338, 452 S.E.2d 233 (1994).

Wrongful Eviction Actions. — The prohibition against punitive or treble damages in wrongful eviction actions contained in § 42-25.9(a) of the Ejectment of Residential Tenants Act does not preclude tenants from recovering treble damages under this section and attorney's fees under § 75-16.1 of the Unfair and Deceptive Practices Act. Stanley v. Moore, 339 N.C. 717, 454 S.E.2d 225 (1995).

Treble Damages Required and At-

torney's Fees Permissible. — If the trial court finds that a defendant has violated the Unfair and Deceptive Trade Practices Act, it must award treble damages, and it may, in its discretion, award attorney's fees. Canady v. Crestar Mtg. Corp., 109 F.3d 969 (4th Cir. 1997).

§ 75-16.1. Attorney fee.

CASE NOTES

Willfulness Required for Award of Attorney's Fees. — While a showing of willfulness seems not to be required in order to establish a violation of the act with respect to ordinary damages, the portion of the statute relating to attorney's fees does require such showing. Standing v. Midgett, 850 F. Supp. 396 (E.D.N.C. 1993).

Willfulness Shown. — The court made adequate findings to support its conclusions that defendant willfully charged usurious rates of interest and that defendant's pre-trial rejection of plaintiff's offer to settle constituted an unwarranted refusal to settle. Britt v. Jones, 123 N.C. App. 108, 472 S.E.2d 199 (1996).

Findings Required. —
The court must make specific findings of fact that the actions of the party charged with violating Chapter 75 were willful, that he refused to resolve the matter fully, and that the attorney's fee was reasonable. Barbee v. Atlantic Marine Sales & Serv., Inc., 115 N.C. App. 641, 446 S.E.2d 117 (1994).

Plaintiff Not Entitled to Attorney's Fees. — Successful plaintiff in trade dress infringement action was not entitled to attorney's fees where the jury found that defendant did not intentionally copy plaintiff's trade dress. Tools USA & Equip. Co. v. Champ Frame Straightening Equip., Inc., 885 F.Supp. 141 (M.D.N.C. 1994).

Wrongful Eviction Actions. — The prohibition against punitive or treble damages in wrongful eviction actions contained in § 42-25.9(a) of the Ejectment of Residential Tenants Act does not preclude tenants from recovering treble damages under § 75-16 and attorney's fees under this section of the Unfair and Deceptive Practices Act. Stanley v. Moore, 339 N.C. 717, 454 S.E.2d 225 (1995).

Discretion of Court. —
If the trial court finds that a defendant has violated the Unfair and Deceptive Trade Practices Act, it must award treble damages, and it may, in its discretion, award attorney's fees. Canady v. Crestar Mtg. Corp., 109 F.3d 969 (4th Cir. 1997).

Findings of Fact Held Sufficient. —
Plaintiff was entitled to attorneys' fees pursuant to this section in connection with services performed in appeal to the State Supreme Court which was necessary in order to protect plaintiff's right to postjudgment interest. Custom Molders, Inc. v. American Yard Prods., Inc., 342 N.C. 133, 463 S.E.2d 199 (1995).

Applied in Peterson v. Bozzano, 173 Bankr. 990 (Bankr. M.D.N.C. 1994).

Cited in Nintendo of Am., Inc. v. Aeropower Co., 34 F.3d 246 (4th Cir. 1994).

§ 75-16.2. Limitation of actions.

CASE NOTES

Applied in Barbee v. Atlantic Marine Sales & Serv., Inc., 115 N.C. App. 641, 446 S.E.2d 117 (1994); Medicare Rentals, Inc. v. Advanced Servs., 119 N.C. App. 767, 460 S.E.2d 361 (1995); Hinson v. United Fin. Servs., Inc., 123 N.C. App. 469, 473 S.E.2d 382 (1996).

ARTICLE 2.

Prohibited Acts by Debt Collectors.

§ 75-50. Definitions.

Legal Periodicals. —

For comment, "As If We Had Enough to Worry About ... Attorneys and the Federal Fair Debt Collection Practices Act: Supreme Court Rules on Former Attorney Exemption", see 18 Campbell L. Rev. 165 (1996).

CASE NOTES

Applied in Creekside Apts. v. Poteat, 116 N.C. App. 26, 446 S.E.2d 826, cert. denied, 338 N.C. 308, 451 S.E.2d 632 (1994).

Cited in Wilkes Nat'l Bank v. Halvorsen, — N.C. App. —, 484 S.E.2d 582 (1997).

§ 75-51. Threats and coercion.

CASE NOTES

Cited in Holloway v. Wachovia Bank & Trust Co., 339 N.C. 338, 452 S.E.2d 233 (1994).

§ 75-54. Deceptive representation.

CASE NOTES

Letter to Debtor. — Defendant's contention that only a clear recitation of the statutory language satisfies the requirements of § 75-54 would discourage debt collectors from providing even more clarity and guidance to debtors; thus, letter from bank to debtor was held not to violate subsection (2). Wilkes Nat'l Bank v. Halvorsen, — N.C. App. —, 484 S.E.2d 582 (1997).

§ 75-56. Application.

CASE NOTES

Cited in Holloway v. Wachovia Bank & Trust Co., 339 N.C. 338, 452 S.E.2d 233 (1994); Wall v. City of Raleigh, 121 N.C. App. 351, 465 S.E.2d 551 (1996); Wilkes Nat'l Bank v. Halvorsen, — N.C. App. —, 484 S.E.2d 582 (1997).

ARTICLE 3.

Motor Fuel Marketing Act.

§ 75-81. Definitions.

The following terms shall have the meanings ascribed to them in this section unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) "Person" shall mean any person, firm, association, organization, partnership, business trust, joint stock company, company, corporation or legal entity.
(2) "Sale" shall mean selling, offering for sale or advertising for sale.
(3) "Motor Fuel" means motor fuel, as defined in G.S. 105-449.60, and alternative fuel, as defined in G.S. 105-449.130.
(4) "Cost" or "Costs" shall mean as follows:
  a. For a refiner or terminal supplier, costs shall be presumed to be the refiner's or terminal supplier's prevailing price to the wholesale class of trade at the terminal used by the refiner or terminal supplier to obtain the motor fuel in question or the lowest prevailing price within 10 days prior to a sale alleged to be in violation of G.S. 75-82 hereof plus all transportation expenses including freight expenses (incurred and not otherwise included in the cost of the motor fuel), and motor fuel taxes. If a refiner or terminal supplier does not regularly sell to the wholesale class of trade at the terminal in question, then such refiner or terminal supplier shall use as the prevailing price either (i) the lowest price to the wholesale class of trade of those other refiners or terminal suppliers at the same terminal who regularly sell to the wholesaler class or (ii) a price determined by using standard functional accounting procedures.
  b. For all other sellers, cost includes the invoice or replacement cost, whichever is less, of the grade, brand or blend, of motor fuel within 10 days prior to the date of sale, in the quantity or quantities last purchased, less all rebates and discounts received including prompt payment discounts and plus all applicable State, federal and local taxes, and transportation expenses including freight expenses, incurred and not otherwise included in the cost of the motor fuel.
(5) "Prompt Payment Discounts" shall mean any allowance for payment within a specified time, but shall not include discounts for cash made to the motoring public at motor fuel outlets.
(6) "Affiliate" shall mean any person who (other than by means of a franchise) controls, is controlled by or is under common control with, any other person.
(7) "Motor Fuel Merchant" is any person selling motor fuel to the public.
(8) "Motor Fuel Outlet" is any retail facility selling motor fuel to the motoring public.
(9) "New Retail Outlet" shall mean a new retail facility constructed from the ground or an existing retail facility that is offering motor fuel to the motoring public for the first time.
(10) "Refiner" shall mean any person engaged in the production or refining of motor fuel, whether such production or refining occurs in this State or elsewhere, and includes any affiliate of such person or firm.
(11) "Terminal Supplier" shall mean any person engaged in selling or brokering motor fuel to wholesalers or retailers from a storage facility of more than 2,000,000 gallons

capacity and such person has an ownership interest in or control of the storage facility. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 36; 1995, c. 390, s. 12; 1997-456, s. 27.)

Editor's Note. — Subdivisions (4)(a) and (4)(b) were redesignated as subdivisions (4)a. and (4)b. pursuant to Session Laws 1997-456, s. 27, which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, rewrote subdivision (3).

Chapter 75A.

Boating and Water Safety.

Article 1.

Boating Safety Act.

Sec.
75A-3. Wildlife Resources Commission to administer Chapter; Motorboat Committee; funds for administration.
75A-5.1. Commercial fishing boats; renewal of number.
75A-10. Operating boat or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.
75A-13.2. Personal watercraft.
75A-13.3. Personal watercraft.
75A-17. Enforcement of Chapter.
75A-18. Penalties.

ARTICLE 1.

Boating Safety Act.

§ 75A-3. Wildlife Resources Commission to administer Chapter; Motorboat Committee; funds for administration.

(a) It shall be the duty and responsibility of the North Carolina Wildlife Resources Commission to enforce and administer the provisions of this Chapter.

(b) The chairman of the Wildlife Resources Commission shall designate from among the members of the Wildlife Resources Commission three members who shall serve as the Motorboat Committee of the Wildlife Resources Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Gasoline excise tax revenue is credited to the Account under G.S. 105-449.126. Revenue in the Account shall be used by the Wildlife Resources Commission, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. (1959, c. 1064, s. 3; 1961, c. 644; 1963, c. 1003; 1981 (Reg. Sess., 1982), c. 1182, s. 2; 1993, c. 422, s. 1; 1995, c. 390, s. 13.)

Local Modification. — By virtue of Session Laws 1995 (Reg. Sess., 1996), c. 581, the local modification for Pender (Topsail Sound) by Session Laws 1991, c. 90 should be stricken from the main volume.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, in subsection (c) divided the former second sentence into the present second and fourth sentences, in the present second sentence deleted "and pursuant to G.S. 105-446.2" following "Chapter", and "and" at the end of the sentence, added the third sentence, and added "Revenue in the Account shall be" in the present fourth sentence.

§ 75A-5.1. Commercial fishing boats; renewal of number.

(a) The owner or operator of any commercial fishing boat which is currently licensed for the use of commercial fishing gear under the provisions of G.S. 113-152, shall be entitled to renewal of the certificate of number of such boat when such owner has complied with all of the conditions of this section.

(b) For the purpose of this section, commercial fishing boats are defined as vessels which are used primarily for commercial fishing operations, from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the boat shall submit, and the Wildlife Resources Commission shall require:

(1) The regular application for renewal of the certificate of number of such boat, as provided by G.S. 75A-5;

(2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the boat for which the application for renewal is made is a commercial fishing boat as herein defined; and

(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing boat license tax imposed by G.S. 113-152 has been paid for such boat for the period during which the application for renewal of the certificate of number is submitted.

(d) Any person who shall willfully give false information upon the application or the statement required by the preceding paragraph, or who shall falsify any tax receipt thereby required, shall be guilty of a Class 1 misdemeanor. (1961, c. 469, s. 2; 1965, c. 957, s. 8; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1983, c. 446, s. 2; 1989, c. 727, s. 218(16); 1993, c. 539, s. 565; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 75A-6. Classification; rules.

Local Modification. — Alexander, Burke, Caldwell, McDowell: 1995, c. 19, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 75A-10. Operating boat or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.

(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device on the waters of this State in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall manipulate any water skis, surfboard, nonmotorized vessel, or similar device on the waters of this State while under the influence of an impairing substance.

(b1) No person shall operate any motorboat or motor vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance, or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.

The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this subsection or subsection (b) above.

The relevant definitions contained in G.S. 20-4.01 shall apply to this subsection and subsection (b) above.

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes. (1959, c. 1064, s. 10; 1965, c. 634, s. 3; 1985, c. 615, ss. 1-5; 1989, c. 742, s. 1; 1995, c. 506, s. 14.)

Editor's Note. —

Session Laws 1995, c. 505, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Session Laws 1995, c. 506, s. 14, amended this section, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

CASE NOTES

Operating a motor boat while impaired (DWI boating) is not a lesser-included offense of involuntary manslaughter because a finding of intoxication is essential in DWI boating, but not essential to a conviction of involuntary manslaughter. State v. Hudson, 345 N.C. 729, 483 S.E.2d 436 (1997).

Lesser Included Offense of Involuntary Manslaughter. — Driving while impaired boating is a lesser included offense of involuntary manslaughter predicated upon that crime. State v. Hudson, 123 N.C. App. 336, 473 S.E.2d 415 (1996).

Due process required the trial court to instruct on the lesser included offense of DWI boating as an alternative to the choices of either guilty or not guilty of involuntary namslaughter; this error prejudiced defendant so that he was awarded a new trial. State v. Hudson, 123 N.C. App. 336, 473 S.E.2d 415 (1996).

§ 75A-13.2. Personal watercraft.

(a) No person shall operate a personal watercraft on the waters of this State at any time between the hours from one hour after sunset to one hour before sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(b) No person shall operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a personal flotation device approved by the United States Coast Guard.

(c) A personal watercraft must at all times be operated in a reasonable and prudent manner. Manuevers that endanger life, limb, or property, including:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;
(2) Jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed; and
(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid collision

shall constitute reckless operation of a vessel as provided in G.S. 75A-10.

(d) The provisions of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under G.S. 75A-14.

(e) The provisions of this section shall not apply to that portion of the upper Catawba River covered by G.S. 75A-13.3. (1993 (Reg. Sess., 1994), c. 753, s. 1; 1995 (Reg. Sess., 1996), c. 742, s. 42; 1997-129, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, deleted "class A-1 or A-2" following "means a small" in the second sentence of subsection (a).

The 1997 amendment, effective June 2, 1997, added subsection (e).

§ 75A-13.3. Personal watercraft.

(a) No person shall operate a personal watercraft on the waters of this State at any time between the hours from one hour after sunset to one hour before sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow a person under the age of 16 to operate a personal watercraft. A person of at least 13 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 16 years of age who physically occupies the watercraft; or

(2) The person possesses a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind such vessel is wearing a personal flotation device approved by the United States Coast Guard; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or property, including:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed; and

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid collision.

shall constitute reckless operation of a vessel as provided in G.S. 75A-10.

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

(g) This section applies only to that portion of the waters of the upper Catawaba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawaba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section. (1997-129, s. 1.)

Editor's Note. — Session Laws 1997-129, s. 1, was codified as this section at the direction of the Revisor of Statutes. Furthermore, subsections (a1), (a2), and (b) through (e) have been redesignated as subsections (b) through (g), respectively, at the direction of the Revisor of Statutes.

§ 75A-15. Rules on water safety; adoption of the Uniform Waterway Marking System.

Local Modification. — By virtue of Session Laws 1995 (Reg. Sess., 1996), c. 581, the local modification for Pender (Topsail Sound) by Session Laws 1991, c. 90 should be stricken from the main volume.

§ 75A-17. Enforcement of Chapter.

(a) Every wildlife protector and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this Chapter and in the exercise thereof shall have authority to stop any vessel subject to this Chapter; and, after having identified himself in his official capacity, shall have authority to board and inspect any vessel subject to this Chapter.

(b) In order to secure broader enforcement of the provisions of this Chapter, the Wildlife Resources Commission is authorized to enter into an agreement with the Department of Environment and Natural Resources whereby the enforcement personnel of the Department shall assume responsibility for enforcing the provisions of this Chapter in the territory and area normally policed by such enforcement personnel and whereby the Wildlife Resources Commission shall contribute a share of the expense of such personnel according to a ratio of time and effort expended by them in enforcing the provisions of this Chapter, when such ratio has been agreed upon by both of the contracting agencies. Such agreement may be modified from time to time as conditions may warrant. (1959, c. 1064, s. 17; 1965, c. 957, s. 9; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218(17); 1997-443, s. 11A.119(a).)

Local Modification. — Catawba (As to establishment of No-Wake Zone on Lake Hickory), 1995 (Reg. Sess., 1996), c. 559.

Editor's Note. — Session Laws 1997-129, s. 4 provides: "It is unlawful to operate a vessel at greater than no-wake speed within 50 yards of a boat launching area, bridge, dock, pier, marina, boat storage structure, or boat service area on the waters of Lake Norman. No-wake speed is idle speed or slow speed creating no appreciable wake.

"With regard to marking the no-wake speed zone established in this section, each of the boards of commissioners of Catawba, Iredell, Lincoln, and Mecklenburg Counties may place and maintain navigational aids and regulatory markers of a general nature on the waters of Lake Norman within the boundaries of each respective county. Provided the counties exercise their supervisory responsibility, they may delegate the actual process of placement or maintenance of the markers to some other agency, corporation, group, or individual. With regard to marking the restricted zones, markers may be placed and maintained by the individuals using the protected areas and facilities in accordance with the Uniform Waterway Marking System and any supplementary standards for that system adopted by the Wildlife Resources Commission.

"This section is enforceable under G.S. 75A-17 as if it were a provision of Chapter 75A of the General Statutes."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural

Resources" for "Environment, Health, and Natural Resources."

§ 75A-18. Penalties.

(a) Except as otherwise provided, any person who violates any provision of this Article or who violates any rule or regulation adopted under authority of this Chapter shall be guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed two hundred and fifty dollars ($250.00) for each such violation. The limitation prescribed by the preceding sentence shall not apply in any case where a more severe penalty may be prescribed in any of said sections.

(b) Any person who violates any provision of G.S. 75A-10(a), (b), or (b1) shall be guilty of a Class 2 misdemeanor.

(c) Any person who violates any provision of G.S. 75A-13.1 shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall only be fined no more than twenty-five dollars ($25.00).

(d) A person who:

(1) Willfully violates G.S. 75A-10(d) is guilty of a Class 1 misdemeanor.

(2) Willfully violates G.S. 75A-10(d) and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.

(e) A person under 16 years of age who operates a personal watercraft in violation of the provisions of G.S. 75A-13.3 is guilty of an infraction as provided in G.S. 14-3.1. (1959, c. 1064, s. 18; 1965, c. 634, s. 3; c. 793; 1969, c. 97, s. 2; 1979, c. 761, s. 8; 1985, c. 615, ss. 6, 7; 1989, c. 742, s. 2; 1993, c. 539, ss. 566, 1285; 1994, Ex. Sess., c. 24, s. 14(c); 1997-129, s. 3.)

Effect of Amendments. — The 1997 amendment, effective June 2, 1997, added subsection (e).

Chapter 75D.

Racketeer Influenced and Corrupt Organizations.

Sec.
75D-6. Power to compel examination.
75D-7. False testimony.

§ 75D-1. Short title.

CASE NOTES

Cited in Kaplan v. Prolife Action League, 111 N.C. App. 1, 431 S.E.2d 828 (1993); Teague v. Bakker, 35 F.3d 978 (4th Cir. 1994).

§ 75D-2. Findings and intent of General Assembly.

CASE NOTES

Legislative Intent. — The plain language of the statute, coupled with the legislative intent, clearly indicates the scope of NC RICO is limited to cases where pecuniary gain is derived from organized unlawful activity prohibited under the statute. Kaplan v. Prolife Action League, 123 N.C. App. 720, 475 S.E.2d 247 (1996).

Subsection (c) requires the aggrieved party to establish a causal connection between the alleged pecuniary gain and defendant's activities which allegedly violate § 75D-4. Kaplan v. Prolife Action League, 123 N.C. App. 720, 475 S.E.2d 247 (1996).

§ 75D-4. Prohibited activities.

CASE NOTES

Cited in Kaplan v. Prolife Action League, 123 N.C. App. 720, 475 S.E.2d 247 (1996).

§ 75D-5. RICO civil forfeiture proceedings.

CASE NOTES

Payment of Proceeds from Sale of Forfeited Property. — Since the Racketeer Influenced and Corrupt Organizations Act (RICO) provides that the proceeds from the sale of RICO forfeited property accrue to the State, such proceeds must therefore be paid to the public school fund as required by N.C. Const., Art. IX, § 7. State ex rel. Thornburg v. 532 "B" Street, 334 N.C. 290, 432 S.E.2d 684 (1993).

Evidence. — There was ample evidence to show that defendant's property was used in the course of a racketeering activity where the State's forecast of evidence revealed that each incident of criminal conduct took place on the real property for which forfeiture was sought, where also included in the State's evidence were affidavits of law enforcement officers showing without question that such property was used to further defendant's criminal activity, and where at the hearing before the trial court, the defendant made no effort to rebut or contest the State's evidence. State ex rel. Thornburg v. Lot & Bldgs. at 800 Waughtown St., 107 N.C. App. 559, 421

S.E.2d 374, cert. denied, 333 N.C. 170, 424 S.E.2d 915 (1992).

Pattern of Racketeering Activity. — Where the defendant engaged in at least two incidents of racketeering activity that had the same or similar purposes and methods of commission and at least one incident occurred within a four-year period of the other, two of defendant's gambling convictions alone would constitute a "pattern of racketeering activity" under this Act. State ex rel. Thornburg v. Lot & Bldgs. at 800 Waughtown St., 107 N.C. App. 559, 421 S.E.2d 374, cert. denied, 333 N.C. 170, 424 S.E.2d 915 (1992).

Property Used in Furtherance of Unlawful Activity. — Where the evidence adduced at trial clearly showed that defendant engaged in a pattern of racketeering activity and that certain of his property was used in furtherance of such unlawful activity, the defendant's property was subject to forfeiture. State ex rel. Thornburg v. Lot & Bldgs. at 800 Waughtown St., 107 N.C. App. 559, 421 S.E.2d 374, cert. denied, 333 N.C. 170, 424 S.E.2d 915 (1992).

§ 75D-6. Power to compel examination.

Whenever the Attorney General has reason to believe that any person or enterprise may have information or may be in possession, custody or control of any documentary materials relevant to an activity prohibited under G.S. 75D-4, he may issue in writing, and cause to be served upon such person or upon the appropriate officers, agents, and employees of any such enterprise (other than one employed as an attorney by such person or enterprise), a notice requiring such person or enterprise to submit themselves to examination by him, and produce for his inspection any documentary material relevant to an investigation of activities prohibited by G.S. 75D-4.

The notice shall be served either personally or by registered or certified mail return receipt requested. The notice shall specify the general purpose of the examination, a general description of the documentary material to be produced, and the time and place where such examination will take place. The witness shall be placed under oath or affirmation to testify truthfully. The examination shall be recorded and the witness has the right to a copy upon payment of its cost. The witness has the right to have legal counsel present during the examination.

The Attorney General shall also have the right to apply to any judge of the superior court division, after five days' prior notice of such application served in the same manner as the notice of examination described in this section, for an order requiring such person or enterprise to appear and subject himself or itself to examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such court.

No such demand or order of a court shall contain any requirement which would be held to be unreasonable if contained in a civil discovery request or court order issued pursuant to G.S. 1A-1, Rules of Civil Procedure 26-36. Any person or enterprise upon whom a demand is served and who objects to complying with such demand in whole or in part, shall, within five days of service of the demand, serve a written reply upon the Attorney General specifying the nature of the objection.

Such examination shall be held in camera and no one, except the person or enterprise being examined, may release information obtained from the examination prior to a proceeding being instituted under this Chapter by the Attorney General. Such information may be used in any proceeding instituted under this Chapter by the

Attorney General. Any person violating the provisions of this paragraph shall be guilty of a Class 1 misdemeanor. If such offending person is a public officer or employee, he shall also be dismissed from such office or employment and shall not hold any public office or employment in this State for a period of five years after conviction. This paragraph does not prohibit disclosure of this information to other employees of the Department of Justice, or to district attorneys designated in writing by the Attorney General as authorized to receive this information. (1985 (Reg. Sess., 1986), c. 999, s. 1; 1993, c. 539, s. 569; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 569, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 75D-7. False testimony.

False testimony as to any material fact by any person examined under the provisions of this Chapter shall constitute perjury and a conviction shall be punishable as in other cases of perjury as a Class F felony. (1985 (Reg. Sess., 1986), c. 999, s. 1; 1993, c. 539, s. 1286; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1286, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 75D-8. Available RICO civil remedies.

CASE NOTES

Cited in Kaplan v. Prolife Action League, 123 N.C. App. 720, 475 S.E.2d 247 (1996).

§ 75D-14. Release of lien notice.

CASE NOTES

Cited in Teague v. Bakker, 35 F.3d 978 (4th Cir. 1994).

Chapter 75E.

Unlawful Activities in Connection With Certain Corporate Transactions.

Sec.
75E-1. Definitions.

§ 75E-1. Definitions.

The following words and phrases as used in this Chapter shall have the following meanings unless the context clearly requires otherwise:

(1) "Acquiring person statement" has the same meaning as G.S. 55-9A-02.
(2) "Business combination" has the same meaning as G.S. 55-9-01(b)(1).
(3) "Control share acquisition" has the same meaning as G.S. 55-9A-01(b)(3).
(4) "Person" includes "entity" (as that term is defined in G.S. 55-1-40(9)), "individual" (as that term is defined in G.S. 55-1-40(13)) and, without limiting the generality of the foregoing, "other entity" (as that term is defined in G.S. 55-9-01(b)(6)). (1991, c. 440, s. 1; 1993, c. 553, s. 25.)

Chapter 76.

Navigation.

Article 5.

General Provisions.

Sec.
76-40. Navigable waters; certain practices regulated.

ARTICLE 5.

General Provisions.

§ 76-40. Navigable waters; certain practices regulated.

(a) It shall be unlawful for any person, firm or corporation to place, deposit, leave or cause to be placed, deposited or left, either temporarily or permanently, any trash, refuse, rubbish, garbage, debris, rubble, scrapped vehicle or equipment or other similar waste material in or upon any body of navigable water in this State; "waste material" shall not include spoil materials lawfully dug or dredged from navigable waters and deposited in spoil areas designated by the Department of Environment and Natural Resources; violation of this section shall constitute a Class 2 misdemeanor.

(a1) It shall be unlawful for any person, firm or corporation to place, deposit, leave or cause to be placed, deposited, or left, either temporarily or permanently, any medical waste as defined in G.S. 130A-290 in the open waters of the Atlantic Ocean over which the State has jurisdiction or the navigable waters of this State.

(1) A person who willfully violates this subsection is guilty of a Class 1 misdemeanor.

(2) A person who willfully violates this subsection and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.

(b) No person, firm or corporation shall erect upon the floor of, or in or upon, any body of navigable water in this State, any sign or other structure, without having first secured a permit to do so from the appropriate federal agencies (which would include a permit from the State of North Carolina) or from the Department of Administration, or from the agency designated by the Department to issue such permit. Provided, however, this subsection shall not apply to commercial fishing nets, fish offal, ramps, boathouses, piers or duck blinds placed in navigable waters. Any person, firm or corporation erecting such sign or other structure without a proper permit or not in accordance with the specification of such permit shall be guilty of a Class 2 misdemeanor. The State may immediately proceed to remove or cause to be removed such unlawful sign or structure after five days' notice to the owner or erector thereof and the cost of such removal by the State shall be payable by the person, firm or corporation who erected or owns the unlawful sign or other structure and the State may bring suit to recover the costs of the removal thereof.

(c) Whenever any structure lawfully erected upon the floor of, or in or upon, any body of navigable water in this State, is abandoned, such structure shall be removed by the owner thereof and the area cleaned up within 30 days of such abandonment; failure to comply with this section shall constitute a Class 2 misdemeanor. The State may, after 10 days' notice to the owner or erector thereof, remove the abandoned structure and have the area cleaned up and the cost of such removal and cleaning up by the State shall be payable by the owner or erector of the abandoned structure and the State may bring suit to recover the costs thereof.

(d) For purposes of this section, the term "navigable waters" shall not include any waters within the boundaries of any reservoir, pond or impoundment used in connection with the generation of electricity, or of any reservoir project owned or operated by the United States.

(e) The provisions of this section, in the coastal waters of this State, shall be enforced by the Department of Environment and Natural Resources. In the inland waters of the State, the provisions of this section shall be enforced by the Wildlife Resources Commission. The Department of Environment and Natural Resources and the Wildlife Resources Commission shall cooperate in the enforcement of this section. (1784, c. 206, s. 11; 1811, c. 839; 1833, c. 146; R.S., c. 88, ss. 23, 24, 45; 1842, c. 65, s. 4; 1846, c. 60, s. 3; R.C., c. 85, ss. 40, 41; Code, ss. 3537, 3538; Rev., s. 3560; C.S., s. 6891; 1969, c. 792; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, ss. 13, 218(18); c. 742, s. 3; 1993, c. 539, ss. 570, 1287; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1993, c. 539, ss. 570 and 1287, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

§ 76-41. Obstructing waters of Currituck Sound.

Editor's Note. — Session Laws 1993, c. 539, s. 571, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 76-42. Lumbermen to remove obstructions in Albemarle Sound.

Editor's Note. — Session Laws 1993, c. 539, s. 572, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 76-43. Anchorage in range of lighthouses.

Editor's Note. — Session Laws 1993, c. 539, s. 573, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 76-47. Acting as pilot without license.

Editor's Note. — Session Laws 1993, c. 539, s. 574, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 76-57. Rafts to exercise care in passing buoys, etc., penalty.

Editor's Note. — Session Laws 1993, c. 539, s. 575, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 76-58. Interfering with buoys, beacons, and day marks.

Editor's Note. — Session Laws 1993, c. 539, s. 576, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 76A.
Navigation and Pilotage Commissions.

SUBCHAPTER I. CAPE FEAR RIVER NAVIGATION AND PILOTAGE COMMISSION.

Article 2.

Pilots.

Sec.
76A-12. Apprentices.
76A-16. Compulsory use of pilots.

SUBCHAPTER II. MOREHEAD CITY NAVIGATION AND PILOTAGE COMMISSION.

Article 5.

Pilots.

Sec.
76A-46. Compulsory use of pilots.

SUBCHAPTER I. CAPE FEAR RIVER NAVIGATION AND PILOTAGE COMMISSION.

ARTICLE 2.

Pilots.

§ 76A-12. Apprentices.

The Commission when it deems necessary for the best interest of the State is hereby authorized to appoint in its discretion apprentices, none of whom shall be less than 21 years of age, and to make and enforce reasonable rules and regulations relating thereto. Apprentices shall serve for a minimum of one year but no longer than three years in order to be eligible for a limited license. The Commission shall adopt rules and regulations to monitor the progress of apprentices on a regular basis to assure the progressive development of knowledge and skill necessary to obtain a limited license. (1981, c. 910, s. 1; 1987, c. 475.)

§ 76A-16. Compulsory use of pilots.

Every foreign vessel and every U.S. vessel sailing under register, including such vessels towing or being towed when underway in the Cape Fear River and Bar and over 60 gross tons, shall employ and take a State-licensed pilot, except when maneuvering during berthing or unberthing operations, shifting within the confine of ports or terminals, passing through bridges, with tug assistance and with a docking master aboard the vessel. Any master of a vessel violating this section shall be guilty of a Class 1 misdemeanor except as provided for in G.S. 76A-18. (1981, c. 910, s. 1; 1993, c. 539, s. 577; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 577, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER II. MOREHEAD CITY NAVIGATION AND PILOTAGE COMMISSION.

ARTICLE 5.

Pilots.

§ 76A-46. Compulsory use of pilots.

Every foreign vessel and every United States vessel sailing under register, including such vessels towing or being towed when underway or docking in the waters of the Morehead City Harbor and Beaufort Bar, either incoming or outgoing, and over 60 gross tons, shall employ and utilize a State licensed pilot. Every foreign vessel sailing including such vessels towing or being towed when underway or docking in the Morehead City to Aurora water route, and over 60 gross tons, shall employ and utilize a State licensed pilot. Any master of a vessel violating this section by failing to use a State licensed pilot shall be guilty of a Class 1 misdemeanor except as provided for in G.S. 76A-54. (1981 (Reg. Sess., 1982), c. 1176, s. 1; 1985, c. 517, s. 3; 1993, c. 539, s. 578; 1994, Ex. Sess., c. 14, s. 45; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 578, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 77.
Rivers, Creeks, and Coastal Waters.

Article 2.

Obstructions in Streams.

Sec.
77-13. Obstructing streams a misdemeanor.
77-14. Obstructions in streams and drainage ditches.

Article 5.

High Rock Lake Marine Commission.

77-57. Regulatory authority.
77-59 through 77-69. [Reserved.]

Article 6.

Mountain Island Lake Marine Commission.

Sec.
77-70. Definitions.
77-71. Authority to create Commission; withdrawal from and dissolution of Commission.
77-72. Membership; terms.
77-73. Compensation; budget.
77-74. Organization and meetings.
77-75. Powers of the Commission; administration and funding.
77-76. Filing and publication of joint ordinances.
77-77. Regulatory authority.
77-78. Enforcement.

ARTICLE 1.

Commissioners for Opening and Clearing Streams.

§ 77-7. Failure of owner of dam to keep gates, etc.

Editor's Note. — Session Laws 1993, c. 539, s. 579, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 2.

Obstructions in Streams.

§ 77-12. Obstructing passage of boats.

Editor's Note. — Session Laws 1993, c. 539, s. 580, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 77-13. Obstructing streams a misdemeanor.

If any person, firm, or corporation shall fell any tree, or put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, stream, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, or whereby the navigation of such stream may be impeded, delayed, or prevented, the person, firm, or corporation so offending shall be guilty of a Class 2 misdemeanor. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party. Nothing in this section shall prevent the erection of fish dams or hedges across any stream which do not extend across more than two thirds of its width at the point of obstruction. If the fish dams or hedges extend more than two thirds of the width of any stream, the said penalties shall attach. This section may be enforced by marine fisheries inspectors and wildlife protectors. Within the bounds of any county or municipality, this section may also be enforced by any law enforcement officer having territorial jurisdiction, or by the county engineer. This section may also be enforced by specially commissioned forest law-enforcement officers of the Department of Environment and Natural Resources for offenses occurring in woodlands. For purposes of this section, the term "woodlands" means all forested areas, including swamp and timber lands, cutover lands, and second-growth stands in previously cultivated sites. (1872-3, c. 107, ss. 1, 2; Code, s. 1123; Rev., s. 3559; C.S., s. 7377; 1975, c. 509; 1977, c. 771, s. 4; 1979, c. 493, s. 1; 1987, c. 641, s. 12; 1989, c. 727, s. 218(19); 1991, c. 152, s. 1; 1993, c. 539, s. 581; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1993, c. 539, s. 581, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 77-14. Obstructions in streams and drainage ditches.

If any person, firm or corporation shall fell any tree or put any slabs, stumpage, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine or ditch, or in any other outlet which serves to remove water from any land whatsoever whereby the drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall be guilty of a Class 2 misdemeanor: Provided, however, nothing herein shall prevent the construction of any dam or weir not otherwise prohibited by any valid local or State statute or regulation. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party. This section may be enforced by marine fisheries inspectors and wildlife protectors. Within the boundaries of any county or municipality this section may also be enforced by any law enforcement officer having territorial jurisdiction, or by the county engineer. This section may also be enforced by specially commissioned forest law-enforcement officers of the Department of Environment and Natural Resources for offenses occurring in woodlands. For purposes of this section, the term "woodlands" means all forested areas, including swamp and timber lands, cutover lands and second-growth stands on previously cultivated sites. (1953, c. 1242; 1957, c. 524; 1959, cc. 160, 1125; 1961, c. 507; 1969, c. 790, s. 1; 1975, c. 509; 1977, c. 771, s. 4; 1979, c. 493, s. 1; 1987, c. 641, s. 13; 1989, c. 727, s. 218(20); 1991, c. 152, s. 2; 1993, c. 539, s. 582; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1993, c. 539, s. 582, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

CASE NOTES

Insurance company could not deny coverage to defendants where they did not intentionally harm their land, and they did not intentionally violate state or county law regarding streams or landfills. Nationwide Mut. Fire Ins. Co. v. Banks, 114 N.C. App. 760, 443 S.E.2d 93, cert. denied, 337 N.C. 695, 448 S.E.2d 530 (1994).

ARTICLE 4.

Lake Wylie Marine Commission.

§ 77-37. Regulations for Lake Wylie and shoreline area.

Editor's Note. — Session Laws 1993, c. 539, s. 583, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 5.

High Rock Lake Marine Commission.

§ 77-57. Regulatory authority.

(a) Except as limited in subsection (b) below, by restrictions in any joint ordinance, and by other supervening provisions of law, the Commission may make regulations applicable to High Rock Lake and its shoreline area concerning all matters relating to or affecting the use of High Rock Lake. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the two counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on High Rock Lake, the Commission may, after public notice, request that the Wildlife Resources Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on High Rock Lake or its shoreline area. Ordinances providing regulations for specific areas shall clearly establish the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, or by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When an ordinance providing regulations for a specific area is proposed, owners of the parcel of land involved as shown on the county tax listing, and the owners of land within 500 feet of the proposed area to be regulated, as shown on the county tax listing, shall be mailed a notice of the proposed classification by first-class mail at the last addresses listed for such owners on the county tax abstracts. This mailing requirement does not apply in regulations affecting the entire lake. Notice shall also be given by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to High Rock Lake or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in the two counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

(1) The Secretary of State;
(2) The clerks of superior court of Davidson and Rowan Counties;

(3) The Executive Director of the Wildlife Resources Commission; and

(4) The federal Energy Regulatory Commission licensee for High Rock Lake.

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above are for informational purposes and is not a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this Article relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation. (1993, c. 355, s. 8; 1993 (Reg. Sess., 1994), c. 767, s. 27.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§§ 77-59 through 77-69: Reserved for future codification purposes.

ARTICLE 6.

Mountain Island Lake Marine Commission.

§ 77-70. Definitions.

For purposes of this Article:

(1) "Board" means the board of commissioners of one of the three counties.

(2) "Commission" means the Mountain Island Lake Marine Commission or its governing board, as the case may be.

(3) "Commissioner" means a member of the governing board of the Mountain Island Lake Marine Commission.

(4) "Joint resolution" means a resolution or ordinance substantially identical in content adopted separately by the governing boards in each of the three counties.

(5) "Mountain Island Lake" means the impounded body of water along the Catawba River in the three counties extending from the Cowans Ford Dam downstream to the Mountain Island Dam.

(6) "Shoreline area" means, except as modified by a joint resolution, the area within the three counties lying within 1,000 feet of the full pond elevation contour on Mountain Island Lake. In addition, the shoreline area includes all islands within Mountain Island Lake and all peninsulas extending into the waters of Mountain Island Lake.

(7) "Three counties" means Gaston, Lincoln, and Mecklenburg Counties.

(8) "Wildlife Commission" means the North Carolina Wildlife Resources Commission. (1997-257, s. 1.)

Editor's Note. — Session Laws 1997-257, ss. 1-9 were codified as this Article at the direction of the Revisor of Statutes.

§ 77-71. Authority to create Commission; withdrawal from and dissolution of Commission.

The three counties may by joint resolution create the Mountain Island Lake Marine Commission. Upon its creation the Commission has the powers, duties, and responsibilities conferred upon it by joint resolution, subject to the provisions of this Article. The provisions of any joint resolution may be modified, amended, or rescinded by a subsequent joint resolution. A county may unilaterally withdraw from participation as provided by any joint resolution or the provisions of this Article, once the Commission has been created, and any county may unilaterally withdraw from the Commission at the end of any budget period upon 90 days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved, and all property of the Commission must be distributed to or divided among the three counties and any other public agency or agencies serving the Mountain Island Lake area in a manner considered equitable by the Commission by resolution adopted by it prior to dissolution. (1997-257, s. 1.)

§ 77-72. Membership; terms.

Upon its creation, the Commission shall have a governing board of seven. Except as otherwise provided for the initial appointees, each commissioner shall serve a three-year term. Upon creation of the Commission, the Boards of Commissioners of Gaston County and Mecklenburg County shall appoint three commissioners each, and the Board of Commissioners of Lincoln County shall appoint one commissioner. Of the initial appointees:

(1) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve one-year terms;

(2) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve two-year terms; and

(3) One member appointed by Gaston County, one member appointed by Mecklenburg County, and the member appointed by Lincoln County shall serve three-year terms.

Any commissioner who has served two consecutive terms, including any initial term of less than three years, may not be reappointed to a third consecutive term. Such a member may, however, be appointed to serve again after the expiration of the term of the member's successor.

On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing that commissioner, or removal of the commissioner for cause, as determined by the board appointing that commissioner, the board affected may appoint another commissioner to fill the unexpired term. (1997-257, s. 1.)

§ 77-73. Compensation; budget.

The joint resolution of the three counties shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by those budgetary and accounting procedures specified by joint resolution. (1997-257, s. 1.)

§ 77-74. Organization and meetings.

Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and officers as they choose. All officers shall serve one-year terms. The governing board shall adopt rules and regulations as it deems necessary, not inconsistent with the provisions of this Article or of any joint resolution, for the proper discharge of its duties and for the governance of the Commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as authorized by those rules and regulations. The Commission shall meet regularly at times and places as specified in its rules and regulations or in any joint resolution. However, meetings of the Commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply. (1997-257, s. 1.)

§ 77-75. Powers of the Commission; administration and funding.

(a) Within the limits of funds available to it and subject to the provisions of this Article and of any joint resolution, the Commission may:

(1) Hire and fix the compensation of permanent and temporary employees and staff as it may deem necessary in carrying out its duties;

(2) Contract with consultants for services it requires;

(3) Contract with the State of North Carolina or the federal government, or any agency or department, or subdivision of them, for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;

(4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of contracts;

(5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this Article; and

(6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Mountain Island Lake and its shoreline area, or protection of property in the shoreline area subject however to Chapter 113 of the General Statutes and rules promulgated under that Chapter.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, by the State of North Carolina or its agencies or subdivisions, or by private and civic sources.

(c) The governing boards of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually property taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution, or as provided by G.S. 153A-149.

(d) The Commission shall be subject to those audit requirements as may be specified in any joint resolution.

(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be deemed to substitute in whole or in part for the financial contribution required of that county in support of the Commission.

(f) Unless otherwise specified by joint resolution, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties. (1997-257, s. 1.)

§ 77-76. Filing and publication of joint ordinances.

(a) A copy of the joint resolution creating the Commission and of any joint resolution amending or repealing the joint resolution creating the Commission shall be filed with the Executive Director of the Wildlife Commission. When the Executive Director receives resolutions that are in substance identical from all three counties concerned, the Executive Director shall within 10 days so certify and distribute a certified single resolution text to the following:

(1) The Secretary of State;

(2) The clerk to the governing board of each of the three counties;

(3) The clerks of Superior Court of Lincoln, Mecklenburg, and Gaston Counties. Upon request, the Executive Director also shall send a certified single copy of any and all applicable joint resolutions to the chairman of the Commission; and

(4) A newspaper of general circulation in the three counties.

(b) Unless a joint resolution specifies a later date, it shall take effect when the Executive Director's certified text has been submitted to the Secretary of State for filing. Certifications of the Executive Director under the seal of the Commission as to the text or amended text of any joint resolution and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by any clerk of superior court of the text of any certified resolution filed with him by the Executive Director is admissible in evidence and the Executive Director's submission of the resolution for filing to the clerk shall constitute prima facie evidence that that resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any resolution by the Executive Director to any person other than the Secretary of State. (1997-257, s. 1.)

§ 77-77. Regulatory authority.

(a) Except as limited in subsection (b) of this section, by restrictions in any joint resolution, and by other supervening provisions of law, the Commission may make regulations applicable to Mountain Island Lake and its shoreline area concerning all matters relating to or affecting the use of Mountain Island Lake. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing being given in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on Mountain Island Lake, the Commission may, after public notice, request that the Wildlife Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon dates as stipulated in the regulations, except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Mountain Island Lake or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Mountain Island Lake or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it must be printed in a newspaper of general circulation in the three counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

(1) The Secretary of State;
(2) The clerks of Superior Court of Gaston, Lincoln, and Mecklenburg Counties; and
(3) The Executive Director of the Wildlife Commission.

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. Those certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and shall not be a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this Article relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it shall be presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation. (1997-257, s. 1.)

§ 77-78. Enforcement.

(a) Where a joint resolution so provides, all law enforcement officers, or those officers as may be designated in the joint resolution, with territorial jurisdiction as to any part of Mountain Island Lake or its shoreline area shall, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Mountain Island Lake and its shoreline area.

(b) Where a joint resolution provides it, the Commission may hire special officers to patrol and enforce the laws on Mountain Island Lake and its shoreline area. These special officers have and exercise all the powers of peace officers generally within the area in question and shall take the oaths and be subject to all provisions of law relating to law enforcement officers.

(c) Unless a joint resolution provides otherwise, all courts in the three counties within the limits of their subject matter jurisdiction shall have concurrent jurisdiction as to all criminal offenses arising within the boundaries of Mountain Island Lake and its shoreline area.

(d) Where a law enforcement officer with jurisdiction over any part of Mountain Island Lake or its shoreline area is performing duties relating to the enforcement of the laws on Mountain Island Lake or in its shoreline area, the officer has the extraterritorial jurisdiction necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of that area to another although across territory not within the boundaries of Mountain Island Lake and its shoreline area; conducting prisoners in custody to court or detention facilities as authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that such process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be deemed an extension of the duties of the office held, and no officer shall take any additional oath or title of office. (1997-257, s. 1.)

Chapter 78A.

Editor's Note. — The legislation and annotations affecting Chapter 78A have been included in a recently published replacement chapter.

Chapter 78B.

Tender Offer Disclosure Act.

Sec.
78B-8. Criminal penalties.

§ 78B-8. Criminal penalties.

(a) Any person who willfully violates this Chapter may be fined not more than five thousand dollars ($5,000) or imprisoned for not more than two years or both. Each of the acts specified herein shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under this Chapter more than two years after the alleged violation.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter to the Attorney General or the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime under any other statute. (1977, c. 781, s. 1; 1987, c. 282, s. 10.)

Chapter 78C.

Editor's Note. — The legislation and annotations affecting Chapter 78C have been included in a recently published replacement chapter.

Chapter 80.

Editor's Note. — The legislation and annotations affecting Chapter 80 have been included in a recently published replacement chapter.

Chapter 81A.

Weights and Measures Act of 1975.

Article 1.

Administration of Chapter.

Sec.
81A-2. Administration of these Articles.
81A-7. Local inspection of weights and measures.
81A-9. Definitions.
81A-10. Reimbursement of expenses.

Article 3.

Violations.

81A-26. Sale from bulk.
81A-29. Offenses and penalties.

Article 5.

Public Weighmasters.

Sec.
81A-51. Definitions.

Article 6.

Scale Technician.

81A-71. Prerequisites for scale technician.

ARTICLE 1.

Administration of Chapter.

§ 81A-2. Administration of these Articles.

The provisions of this Chapter shall be administered by the Commissioner or his authorized agent. For the purpose of administering and giving effect to the provisions of this Chapter, the provisions of Handbook 44 as adopted by the National Conference on Weights and Measures, are hereby adopted except insofar as modified or rejected by the North Carolina Board of Agriculture. The North Carolina Board of Agriculture is empowered to make such further rules and regulations as may be necessary to make effective the purposes and provisions of this Chapter. All fees or moneys received by the Commissioner pursuant to this Chapter shall be placed in the Department of Agriculture and Consumer Services fund for the purpose of enforcing this Chapter. (1927, c. 261, s. 2; 1931, c. 150; 1943, c. 762, s. 1; 1949, c. 984; 1975, c. 544; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 81A-7. Local inspection of weights and measures.

When any city or county appoints a local inspector of weights and measures, the appointment and regulation of his work must be pursuant to the rules and regulations of the Department of Agriculture and Consumer Services and his work shall be subject to the supervision of the Commissioner or his authorized agent. (1927, c. 261, s. 6; 1949, c. 984; 1975, c. 544; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 81A-9. Definitions.

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) Adjustment. — "Adjustment" is an act involving the tightening or loosening, or lengthening or shortening, or movement, of any part of a weighing or measuring device, or the coordination of mechanical action of parts or electronic components with or upon each other, so as to make the weighing or measuring device give correct indications of applied weight or measure values within legal tolerance, and the correctness of indications shall be determined by test provided for under definition of the term "service" as defined in this Chapter.

(2) Authorized Agent. — An "authorized agent" is any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any provisions of this Chapter and who is designated by an official identification card issued by the Commissioner.

(3) Barrel. — The term "barrel," when used in connection with beer, ale, porter, and other similar fermented liquor is a unit of 31 liquid gallons; fractional parts of a barrel shall be understood to mean like fractional parts of 31 gallons.

(4) Bulk Sale. — The term "bulk sale" is the sale of commodities when the quantity is determined at the time of sale.

(5) Bushel. — The term "bushel" when used in connection with dry measure and standard containers is a unit of 2150.42 cubic inches, of which the dry quart and dry pint, respectively, are the one-thirty-second and one-sixty-fourth parts.

(6) Commissioner of Agriculture. — "Commissioner" is the Commissioner of Agriculture of the State of North Carolina.

(7) Condemned Equipment. — "Condemned equipment" is equipment that is permanently out of service.

(8) Cord. — "Cord" when used in connection with purchases of wood is a quantity of wood consisting of any number of sticks, bolts or pieces laid parallel and together so as to form a rick or stack occupying a space four feet wide, four feet high and eight feet long, or such other dimensions that will when multiplied together equal 128 cubic feet by volume, construed as being seventy percent (70%) solid and thirty percent (30%) air space or 90 solid cubic feet.

(9) Correct. — "Correct" is conformance to all applicable requirements of this Chapter.

(10) Flour. — "Flour" is any finely ground product of wheat, or other grain, corn, peas, beans, seed or other substance, with or without added ingredients, intended for use as food for man.

(11) Gallon. — "Gallon" when used in connection with liquid measure is a unit of 231 cubic inches, of which the liquid quart, liquid pint and gill are, respectively, the quarter, the one-eighth and the one-thirty-second parts.

(12) Installation. — "Installation" is an act involving the erection, or building, or assembling of parts, or the placing or setting up of a weighing or measuring device so as to give correct indications of applied weight or measure values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under definition of the term "service" as defined in this Chapter.

(13) Maintenance. — "Maintenance" is an act pursuant to the retention of a weighing or measuring device in such working condition as to give correct applied weight or measure value indications within legal tolerance when used as intended, which may involve either or both adjustment or repair before or after inaccuracy develops in fact, and the correctness of indications shall be determined by test provided for under the term "service" as defined in this Chapter.

(14) Meal. — "Meal" is any product of grain, corn, peas, beans, seed or other substance coarsely ground, with or without added ingredients, either bolted, or unbolted, including grits and hominy, intended for use as food for man.

(15) Package. — "Package" is any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.

(16) Person. — "Person" is both plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, firms, societies, and associations.

(17) Pound. — "Pound," used in connection with weight is the avoirdupois pound as declared by act of the United States Congress, except in those cases where it is common practice to use the "troy" pound or "apothecaries" pound, and the "ounce" is one-sixteenth part of an avoirdupois pound.

(18) Primary Standards. — "Primary standards" are the physical standards of the State which serve as the legal reference from which all other standards, weights and measures are derived.

(19) Rejected Equipment. — "Rejected equipment" is equipment that is incorrect, which is considered susceptible of proper repair.

(20) Repair. — "Repair" is an act involving the replacement or mending of a broken or nonadjustable part or parts and the restoration of a weighing or measuring device to such working condition as to give correct indications of applied weight or measure values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under the term "service" as defined in this Chapter.

(21) Sale or Sell. — "Sale" or "sell" is the ordinary meaning of said words and includes barter and exchange.

(22) Scale Technician. — A "scale technician" is any person who, for hire or award, renders service involving adjustment, installation, repair, or maintenance of a scale or weighing device, either used or intended to be used in determining weight value, or values, by either physical act, instruction, or supervision.

(23) Secondary Standards. — "Secondary standards" are the physical standards which are traceable to the primary

standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

(24) Service. — "Service" is activity involving adjustment, installation, repair, or maintenance or a combination of two or more of these activities with respect to a weighing or measuring device.

(25) Ton. — "Ton" is a unit of 2,000 pounds, avoirdupois weight.

(26) Weight. — "Weight" when used in connection with any commodity is net weight; provided, however, where the label declares that the product is sold by drained weight, weight means net drained weight.

(27) Weight(s) and (or) Measure(s). — "Weight(s) and (or) measure(s)" are all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices. (1927, c. 261, ss. 20, 21; 1941, c. 237, s. 2; 1945, c. 280, s. 1; 1947, c. 380; 1975, c. 544; 1991, c. 636, s. 23; 1997-261, s. 7.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" following "Department of Agriculture" in subdivision (2).

§ 81A-10. Reimbursement of expenses.

When any manufacturer requests prototype approval of any commercial weighing or measuring device, said manufacturer shall reimburse the Department of Agriculture and Consumer Services for expenses incurred in the prototype examination of the device before final prototype approval is granted. Travel expenses shall be at the rates established by G.S. 138-6 or any law enacted in substitution therefor. (1981, c. 495, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 3.

Violations.

§ 81A-26. Sale from bulk.

(a) Whenever the quantity is determined by the seller, bulk sales in excess of twenty dollars ($20.00) and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

(1) The name and address of the vendor and the name of the purchaser,

(2) The date delivered,

(3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity,

(4) The identity of the commodity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale,

(5) The count of individually wrapped packages, if more than one, and

(6) For heating fuels which are liquids and gases, the price per gallon and any other charges associated with the delivery. This subdivision applies only to residential, retail deliveries.

(b) Any invoice corresponding to the delivery ticket required under the preceding subsection (a) shall contain the information set forth in the preceding subdivisions (a)(1) through (6), and shall also state the amount of sales tax, if any, and the grand total. This subsection does not apply to any subsequent billing when the seller has previously complied with the requirements of subsections (a) and (b) of this section.

(c) Whenever a seller quotes a price or other terms and conditions to a potential purchaser under this section, if those terms and conditions include a low, introductory price, other reduced charges, or other special conditions not representative of the prices or terms and conditions that apply to existing customers of the same type or class, the seller shall clearly and conspicuously disclose: (i) those facts, (ii) the price and terms and conditions that would on that date apply to existing customers of the same type or class as the potential purchaser, and (iii) the amount of time that the introductory or unrepresentative price or terms and conditions will remain in effect. (1975, c. 544; 1991, c. 642, s. 1; 1997-456, s. 11.)

Effect of Amendments. — The 1997 amendment, effective August 29, 1997, inserted "the commodity in" in subdivision (a)(4).

§ 81A-29. Offenses and penalties.

Any person who violates any provision of this section or any provision of this Chapter or regulations promulgated pursuant thereto for which a specific penalty has not been prescribed shall be guilty of a Class 2 misdemeanor upon a first conviction. Upon a subsequent conviction thereof, said person shall be guilty of a Class 1 misdemeanor. No person shall:

(1) Use or have in possession for use in commerce any incorrect weight or measure.

(2) Remove any tag, seal, or mark from any weight or measure without specific written authorization from the Commissioner or his authorized agent.

(3) Hinder or obstruct any weights-and-measures official in the performance of his duties.

(4) Impersonate in any way any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any part of this Chapter.

(5) Use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned so that its indications may be accurately read and the weighing or measuring operation observed from some position which may be reasonably assumed by a customer.

(6) Manufacture, use or possess a counterfeit seal, tag, mark, certificate, label or decal representing, imitating or copying the same issued by the Commissioner under this Chapter.

(1927, c. 261, ss. 14, 15, 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544; 1981, c. 607, s. 1; 1993, c. 539, s.593; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 8.)

Editor's Note. — Session Laws 1993, c. 539, s. 593, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "designated by the" in subdivision (4).

ARTICLE 5.

Public Weighmasters.

§ 81A-51. Definitions.

For purposes of this Article, the following words, terms and phrases are defined as follows:

(1) "Board" means North Carolina Board of Agriculture.
(2) "Commissioner" means the North Carolina Commissioner of Agriculture or his designated agent.
(3) "Department" means the North Carolina Department of Agriculture and Consumer Services.
(4) "Product" means any product, commodity or article.
(5) "Public weighmaster" means any person who shall weigh, measure or count, or who shall ascertain from a weighing, measuring or recording device for any other person and declare the weight to be the accurate weight of the product upon which the purchase, sale or exchange is based, and receive compensation for the act.
(6) "Weigh" means weigh, measure, count, read or record.
(7) "Weight" means weight, measure, count, reading or recording. (1939, c. 285, s. 1; 1945, c. 1067; 1971, c. 1085, s. 1; 1975, c. 544; 1981, c. 607, s. 4; 1997-261, s. 9.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" at the end of subdivision (3).

ARTICLE 6.

Scale Technician.

§ 81A-71. Prerequisites for scale technician.

It shall be unlawful for any scale technician to render service as a scale technician until after he or she has compiled with the following requirements:

(1) Obtained from the Department of Agriculture and Consumer Services a copy of this Article, a copy of regulations pertinent to said Article, and an application form for registration.

(2) to (4) Repealed by Session Laws 1983, c. 111, s. 2, effective July 1, 1983.

(5) Obtained a registration card or certificate from the Commissioner or his authorized agent and a model form of service certificate.

(6) Obtained from the Department an annual certification of the standards of weight which will be used by the scale technician.

The provisions of this Article shall not apply to a full-time employee who renders service only on a scale or weighing device, or on scales or weighing devices, owned solely by his or her employer unless additional pay or compensation is received for such service. (1941, c. 237, s. 3; 1947, c. 380; 1975, c. 544; 1983, c. 111, s. 2; 1997-261, s. 10.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "a copy of" in subdivision (1).

§ 81A-80. Suspension or revocation of registration; penalty.

Editor's Note. — Session Laws 1993, c. 539, s. 594, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 83A.

Architects.

Sec.
83A-13. Exemptions.

§ 83A-13. Exemptions.

(a) Nothing in this Chapter shall be construed to prevent the practice of general contracting under the provisions of Article 1 of Chapter 87, or the practice by any person who is qualified under law as a "registered professional engineer" of such architectural work as is incidental to engineering projects or utilities, or the practice of any other profession under the applicable licensure provisions of the General Statutes.

(b) Nothing in this Chapter shall be construed to prevent a duly licensed general contractor, professional engineer or architect, acting individually or in combination thereof, from participating in a "Design/Build" undertaking including the preparation of plans and/or specifications and entering individual or collective agreements with the owner in order to meet the owner's requirements for pre-determined costs and unified control in the design and construction of a project, and for the method of compensation for the design and construction services rendered; provided, however, that nothing herein shall be construed so as to allow the performance of any such services or any division thereof by one who is not duly licensed to perform such service or services in accordance with applicable licensure provisions of the General Statutes; provided further, that full disclosure is made in writing to the owner as to the duties and responsibilities of each of the participating parties in such agreements; and, provided further, nothing in this Chapter shall prevent the administration by any of the said licensees of construction contracts and related services or combination of services in connection with the construction of buildings.

(c) Nothing in this Chapter shall be construed to require an architectural license for the preparation, sale, or furnishing of plans, specifications and related data, or for the supervision of construction pursuant thereto, where the building, buildings, or project involved is in one of the following categories:

(1) A family residence, up to eight units attached with grade level exit, which is not a part of or physically connected with any other buildings or residential units;

(2) A building upon any farm for the use of any farmer, unless the building is of such nature and intended for such use as to substantially involve the health or safety of the public;

(3) An institutional or commercial building if it does not have a total value exceeding ninety thousand dollars ($90,000);

(4) An institutional or commercial building if the total building area does not exceed 2,500 square feet in gross floor area;

(5) Alteration, remodeling, or renovation of an existing building that is exempt under this section, or alteration, remodeling, or renovation of an existing building or building site that does not alter or affect the structural system of the building; change the building's access or exit pattern; or change the live or dead load on the building's structural system.

This subdivision shall not limit or change any other exemptions to this Chapter or to the practice of engineering under Chapter 89C of the General Statutes.

(6) The preparation and use of details and shop drawings, assembly or erection drawings, or graphic descriptions utilized to detail or illustrate a portion of the work required to construct the project in accordance with the plans and specifications prepared or to be prepared under the requirements or exemptions of this Chapter.

(d) Nothing in this Chapter shall be construed to prevent any individual from making plans or data for buildings for himself.

(e) Plans and specifications prepared by persons or corporations under these exemptions shall bear the signature and address of such person or corporate officer. (1979, c. 871, s. 1; 1997-457, s. 1.)

Effect of Amendments. — The 1997 amendment, effective August 29, 1997, rewrote subdivision (c)(5).

Chapter 84.

Attorneys-at-Law.

Article 1.

Qualifications of Attorney; Unauthorized Practice of Law.

Sec.
84-5. Prohibition as to practice of law by corporation.

ARTICLE 1.

Qualifications of Attorney; Unauthorized Practice of Law.

§ 84-4.1. Limited practice of out-of-state attorneys.

CASE NOTES

Cited in State v. Cuevas, 121 N.C. App. 553, 468 S.E.2d 425 (1996).

§ 84-5. Prohibition as to practice of law by corporation.

(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Employment Security Commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

(1) A corporation authorized and licensed to act in a fiduciary capacity shall not:

- a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.
- b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.
- c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.

(2) Except as provided in subsection (b) of this section, when any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

- a. Offering wills for probate.
- b. Preparing and publishing notice of administration to creditors.
- c. Handling formal court proceedings.
- d. Drafting legal papers or giving legal advice to spouses concerning dissent from their spouses' wills.
- e. Resolving questions of domicile and residence of a decedent.
- f. Handling proceedings involving year's allowances of widows and children.
- g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
- h. Drafting instruments releasing deeds of trust.
- i. Drafting assignments of rent.
- j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
- k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
  - 1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
  - 2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
  - 3. Handling petitions to the tax court.
- *l.* Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
- m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters of administration.
2. Abstracting or passing upon title to property.
3. Handling litigation relating to claims by or against the estate or trust.
4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.

(3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:

a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.

b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.

c. In matters involving estate and inheritance taxes and federal and State income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.

d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing.

(b) Nothing in this section shall prohibit an attorney retained by a corporation, whether or not the attorney is also a salaried employee of the corporation, from representing the corporation or an affiliate, or from representing an officer, director, or employee of the corporation or an affiliate in any matter arising in connection with the course and scope of the employment of the officer, director, or employee. Notwithstanding the provisions of this subsection, the attorney providing such representation shall be governed by and subject to all of the Rules of Professional Conduct of the North Carolina State Bar to the same extent as all other attorneys licensed by this State. (1931, c. 157, s. 2; 1937, c. 155, s. 2; 1955, c. 526, s. 2; 1969, c. 718, s. 20; 1971, c. 747; 1997-203, s. 1.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, and applicable to acts from which claims, demands, or actions arise on or after that date, added the subsection (a) designation; at the beginning of subdivision (a)(2) inserted "Except as provided in subsection (b) of this section"; and added subsection (b).

ARTICLE 2.

Relation to Client.

§ 84-13. Fraudulent practice, attorney liable in double damages.

CASE NOTES

The elements of fraud are: (1) False representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party. Jordan v. Crew, 125 N.C. App. 712, 482 S.E.2d 735 (1997).

Constructive Fraud. — Constructive fraud differs from actual fraud in that the intent to deceive is not an essential element. Jordan v. Crew, 125 N.C. App. 712, 482 S.E.2d 735 (1997).

Double Damages Awarded. — Where defendant was successor trustee and administrator of estate the trial court did not err in applying this section and allowing double compensatory damages against defendant. Melvin v. Home Fed. Sav. & Loan Ass'n, 125 N.C. App. 660, 482 S.E.2d 6 (1997).

Applied in Sigmon v. Miller-Sharpe, Inc., 197 Bankr. 810 (W.D.N.C. 1996).

Cited in State v. Baldwin, 125 N.C. App. 530, 482 S.E.2d 1 (1997).

ARTICLE 4.

North Carolina State Bar.

§ 84-28.2. Persons immune from suit.

CASE NOTES

Cited in Wallace v. Jarvis, 119 N.C. App. 582, 459 S.E.2d 44 (1995).

Chapter 85B.

Auctions and Auctioneers.

Sec.
85B-4. Licenses required.
85B-6. Fees; local governments not to charge fees or require licenses.
85B-7.1. Handling clients' funds.
85B-9. Penalties and enforcement.

§ 85B-1. Definitions.

Legal Periodicals. — For article, "The Learned Profession Exemption of the North Carolina Deceptive Trade Practices Act: The Wrong Bright Line?," see 15 Campbell L. Rev. 223 (1993).

§ 85B-4. Licenses required.

(a) No person who is not exempt under G.S. 85B-2, shall sell, or offer to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required unless the person holds a currently valid license issued under this Chapter.

(b) No person shall be licensed as an apprentice auctioneer, auctioneer, or receive an auction firm license if the person:

(1) Is under 18 years of age;
(2) Repealed by Session Laws 1983, c. 751, s. 6.
(3) Has within the preceding five years pleaded guilty to, entered a plea of nolo contendere or been convicted of any felony, or committed or been convicted of any act involving fraud or moral turpitude;
(4) Has had an auctioneer or apprentice auctioneer or auction firm license revoked; or
(5) Has, within the preceding five years, committed any act which constitutes grounds for license suspension or revocation under this Chapter or a Commission rule.

(c) Each applicant for an apprentice auctioneer license shall submit a written application in a form approved by the Commission and containing at least two statements by residents of the community in which the applicant resides attesting to the applicant's good moral character.

(c1) Each apprentice auctioneer application and license shall name a licensed auctioneer to serve as the supervisor of the apprentice. No apprentice auctioneer may enter into an agreement to conduct an auction, or conduct an auction, without the express approval of his supervisor. The supervisor shall review all contracts before approving them and shall regularly review the records his apprentice is required to maintain under G.S. 85B-7 to see that they are accurate and current, and shall perform such other supervisory duties as may be required by the Commission.

(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in Raleigh, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has been in the auctioneer business in this State for at least two years prior to the effective date of this act [July 1, 1973], and who makes proper application to the Commission within one year after July 1, 1973, may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice of two years, and without taking the examination required by this subsection. Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution approved by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but must take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to determine whether the applicant possesses the good moral character or other qualifications for licensure.

(e) Each license issued under this Chapter shall be valid from July 1 of the year issued, or from the date issued, whichever is later, to the following June 30 unless sooner revoked or suspended pursuant to this Chapter or a rule of the Commission. A license may be renewed for one year at a time, except an apprentice auctioneer license may not be renewed for more than three times. No examination shall be required for renewal of an auctioneer license if the application for renewal is made within 24 months of the expiration of the previous license.

(f) No person shall be issued an auctioneer or apprentice auctioneer license until the person has made the contribution to the Fund as required by G.S. 85B-4.1.

(g) An auction firm must be licensed by the Board even though no owner or officer of the firm acts as an auctioneer. To be licensed an auction firm must make the contribution to the Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in G.S. 85B-6. Auction firms are covered by the provisions of G.S. 85B-8.

An auction firm license issued by the Commission is restricted to the persons named in the license and does not inure to the benefit of any other person. Where a license is issued to an auction firm, authority to transact business under the license is limited to the person or persons designated in the application and named in the license.

The designated person or persons, prior to being licensed, shall be required to take a written examination, approved by the Commission, and demonstrate to the satisfaction of the Commission a thorough understanding of the law relating to the conduct of the auction business and other matters the Commission deems appropriate. An individual who is licensed as an auctioneer and who is the designated person applying for an auction firm license is not required to take the auction firm examination. Licensed real estate brokers and real estate firms may be exempt from the auction firm examination provided they employ or associate themselves with a licensed auctioneer to handle those aspects of the transactions peculiar to the auctioneer profession. Any person or entity, on the effective date of this Chapter, duly licensed as an auction firm in good standing is not required to take any examination in order to maintain or to renew an auction firm license provided that the license does not otherwise expire or lapse and is not suspended or revoked by the Commission.

(h) The Commission shall publish at least once a year a list of names and addresses of all persons, sole proprietorships, partnerships and corporations holding valid apprentice auctioneer, auctioneer, or auction firm licenses.

(i) The Commission may investigate as it deems necessary the ethical background of any applicant for licensure under this Chapter. (1973, c. 552, s. 4; c. 1195, ss. 1, 2; 1975, c. 648, ss. 2-4; 1983, c. 603, s. 4; c. 751, ss. 6-8; 1989, c. 732, s. 1; 1991 (Reg. Sess., 1992), c. 819, s. 4; c. 1030; s. 51.5; 1993, c. 421, s. 3.)

Editor's Note. — Session Laws 1993, c. 421, s. 3, amended this section effective July 21, 1993, and applicable to fees due on or after that date, by, in the first sentence of the first paragraph of subsection (g), substituting "by the Board" for "as an auctioneer business" and substituting "the firm" for "that business".

§ 85B-6. Fees; local governments not to charge fees or require licenses.

(a) The Commission shall collect and remit to the State Treasurer fees in an amount not to exceed the following:

Item	Maximum Fee
Apprentice Auctioneers:	
Application for license	$ 50.00
Issuance or renewal of license	50.00
Auctioneers:	
Application for license	50.00
Examination	25.00
Issuance or renewal of license	100.00
Auction Firms:	
Application for license	50.00
Examination	25.00
Issuance or renewal of license	100.00
Reinstatement of License	25.00.

An application fee for a license and an examination fee are nonrefundable. The amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal auctioneer license is the greater of the amount set in the above table for an examination for and the issuance of an auctioneer's license and the amount the nonresident's state would charge a resident auctioneer of this State to obtain a comparable license from that state.

A reinstatement fee is payable when a person applies for renewal of a license after the license has lapsed for failure to renew it before it expired. The reinstatement of a lapsed license is not retroactive in effect and does not limit the authority of the courts or of the Commission to take disciplinary action against a person who engages in the auctioneer profession with a lapsed license.

(b) No local government or agency of local government may charge any fees or require any licenses for auctioneers, apprentice auctioneers, or auction firms in addition to those set out in this Chapter. (1973, c. 552, s. 6; c. 1195, s. 3; 1975, c. 648, s. 5; 1977, 2nd Sess., c. 1219, s. 43.7; 1983, c. 751, s. 12; 1991 (Reg. Sess., 1992), c. 819, s. 18; 1993, c. 421, s. 1.)

Editor's Note. — Session Laws 1993, c. 421, s. 1, amended this section effective July 21, 1993, and applicable to fees due on or after that date, by rewriting subsection (a) and in subsection (b) substituting "auction firms" for "auctioneer businesses".

§ 85B-7.1. Handling clients' funds.

(a) Each licensee shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day. The licensee shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located in North Carolina. A licensee who disburses funds on auction day shall prepare a receipt or settlement statement for the disbursed funds that contains the name and address of the person receiving the disbursement and the amount of the disbursement. The receipt or statement shall be signed by the licensee and the person receiving the disbursement.

(b) Each licensee shall maintain, for not less than five years, complete records showing the deposit, maintenance, and withdrawal of trust or escrow funds and the disbursement of funds on auction day. Records of the disbursement of funds on auction day shall include a copy of each receipt or settlement statement issued when the funds were disbursed. The Commission or its designated agent may inspect these records periodically, without prior notice, and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee. (1991 (Reg. Sess., 1992), c. 819, s. 20; 1993, c. 421, s. 2.)

§ 85B-9. Penalties and enforcement.

(a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor.

(b) The Commission may in its own name seek injunctive relief in the General Court of Justice to restrain any violation or anticipated violation of the provisions of G.S. 85B-4(a) or any violation of this Chapter.

(c) The Commission shall be entitled to the services of the Attorney General of North Carolina in enforcing the provisions of this Chapter or may employ an attorney to assist and represent it in enforcement of specific matters. (1973, c. 1195, s. 6; 1975, c. 648, s. 7; 1991 (Reg. Sess., 1992), c. 819, s. 22; 1993, c. 539, s. 600; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 600, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 87.

Contractors.

Article 2.

Plumbing and Heating Contractors.

Sec.

87-21. Definitions; contractors licensed by Board; examination; posting license, etc.

87-22. License fee based on population; expiration and renewal; penalty.

87-23. Revocation or suspension of license for cause.

Article 4.

Electrical Contractors.

87-39. Board of Examiners; appointment; terms; chairman; meetings; quorum; principal office; compensation; oath.

87-40. Secretary-treasurer.

87-43.2. Issuance of license.

87-43.3. Classification of licenses.

87-43.4. Residential dwelling license.

87-47. Penalties imposed by Board; enforcement procedures.

Article 5.

Refrigeration Contractors.

87-52. State Board of Refrigeration Examiners; appointment; term of office.

87-58. Definitions; contractors licensed by Board; examinations.

87-59. Revocation or suspension of license for cause.

87-61. Violations made misdemeanor; employees of licensees excepted.

Article 7.

North Carolina Well Construction Act.

87-85. Definitions.

87-91. Notice of violation; remedial action order.

87-94. Civil penalties.

87-95. Injunctive relief.

Article 7A.

Well Contractors Certification.

87-98.1. Title.

87-98.2. Definitions.

87-98.3. Purpose.

87-98.4. (See editor's note for effective date) Well contractor certification required; applicability.

87-98.5. Types of certification; sole certification.

87-98.6. Well contractor qualifications and examination.

87-98.7. Issuance and renewal of certificates; temporary certification.

87-98.8. Disciplinary actions.

87-98.9. Fees; Well Construction Fund.

87-98.10. Promotion of training.

87-98.11. Responsibilities of well contractors.

87-98.12. (Effective January 1, 1999) Continuing education requirements.

87-98.13. Injunctive relief.

ARTICLE 1.

General Contractors.

§ 87-1. "General contractor" defined; exceptions.

CASE NOTES

II. Unlicensed Contractors.
III. Subcontractors.

II. UNLICENSED CONTRACTORS.

"Owner's Exemption" for Joint Venturer. — Where plaintiff was acting as a joint venturer, it fit under the "owner's exemption" and was not acting as a general contractor under this section, and therefore is not subject to licensing under the statute. Paving Equip., Inc. v. Lake Providence Properties, Inc., 168 Bankr. 864 (Bankr. W.D.N.C. 1993), aff'd, 168 Bankr. 876 (W.D.N.C. 1994), aff'd, 51 F.3d 267 (4th Cir. 1995).

Failure to comply with the licensing statute does not destroy a partner's equity interest in a joint venture in which his capital contribution takes the form of construction and other services. Paving Equip., Inc. v. Lake Providence Properties, Inc., 168 Bankr. 876 (W.D.N.C. 1994), aff'd, 51 F.3d 267 (4th Cir. 1995).

III. SUBCONTRACTORS.

Subcontractors Not Required to Be Licensed. — Where the public is protected by a State agency which has been delegated the authority to supervise the construction and maintenance of highways and highway bridges, the protection of the public does not require licensure of a subcontractor who contracts to perform a small portion of replacement bridge construction and whose work is closely supervised by the State agency. Florence Concrete Prods., Inc. v. North Carolina Licensing Bd., 341 N.C. 134, 459 S.E.2d 201 (1995).

ARTICLE 2.

Plumbing and Heating Contractors.

§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.

(a) Definitions. — For the purpose of this Article:

(1) The word "plumbing" is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.

(2) The phrase "heating, group number one" shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.

(3) The phrase "heating, group number two" means an air conditioning system which consists of an assemblage of interacting components producing conditioned air for comfort cooling by the lowering of temperature, and having a mechanical refrigeration capacity in excess of fifteen tons, and which circulates air.

(4) The phrase "heating, group number three" shall be deemed and held to be a direct heating system of a building which produces heat to raise the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger and using an air distribution system of ducts. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150 group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group

number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.

(5) Any person, firm or corporation, who for a valuable consideration, (i) installs, alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or (ii) lays out, fabricates, installs, alters or restores, or offers to lay out, fabricate, install, alter or restore fire sprinklers, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of plumbing, heating, or fire sprinkler contracting; provided, however, that nothing herein shall be deemed to restrict the practice of qualified registered professional engineers. Any person who installs a plumbing, heating, or fire sprinkler system on property which at the time of installation was intended for sale or to be used primarily for rental is deemed to be engaged in the business of plumbing, heating, or fire sprinkler contracting without regard to receipt of consideration, unless exempted elsewhere in this Article.

(6) The word "contractor" is hereby defined to be a person, firm or corporation engaged in the business of plumbing, heating, or fire sprinkler contracting.

(7) The word "heating" shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.

(8) Repealed by Session Laws 1997-298, s. 1, effective July 15, 1997.

(9) The word "Board" means the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.

(10) The word "experience" means actual and practical work directly related to the category of plumbing, heating group number one, heating group number two, heating group number three, or fire sprinkler contracting, and includes related work for which a license is not required.

(11) The phrase "fire sprinkler" means an automatic or manual sprinkler system designed to protect the interior or exterior of a building or structure from fire, and where the primary extinguishing agent is water. These systems include wet pipe and dry pipe systems, preaction systems, water spray systems, foam water sprinkler systems, foam water spray systems, nonfreeze systems, and circulating closed-loop systems. These systems also include the overhead piping, combination standpipes, inside hose connections, thermal systems used in connection with the sprinklers, tanks, and pumps connected to the sprinklers, and controlling valves and devices for actuating an alarm when the system is in operation. This subsection shall not apply to owners of property who are building or improving farm outbuildings. This subsection shall not include water and standpipe systems having no connection with a fire sprinkler system. Nothing herein shall prevent licensed plumbing contractors, utility contractors, or fire sprinkler contractors from installing underground water supplies for fire sprinkler systems.

(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. —

(1) In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all plumbing, heating, and fire sprinkler systems for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings.

(2) Effective April 15, 1998, the Board shall establish and issue a fuel piping license for use by persons who do not possess the required Class I or Class II plumbing or heating license, but desire to engage in the contracting or installing of fuel piping extending from an approved fuel source at or near the premises, which piping is used or may be used partly or entirely to supply fuel to plumbing or heating systems or equipment or which, by its installation, may alter or affect the fuel supply to plumbing or heating systems or equipment within the meaning of G.S. 87-21(a).

The Board may also establish additional restricted classifications to provide for: (i) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting; (ii) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting that is an incidental part of their primary business, which is a lawful business other than heating, plumbing, or fire sprinkling contracting; or (iii) the licensing of persons desiring to engage in contracting and installing fuel piping from an approved fuel source on the premises to a point inside the residence.

(3) The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET). As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof. The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required. The Board may require experience as a condition of examination, provided that (i) the experience required

may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience.

(4) Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, or each restricted classification, and may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.

(5) The Board is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or fire sprinkler contracting, or any combination thereof. The Board is also authorized to issue a certificate of license limited to one or more restricted classifications that are established pursuant to this section.

(6) Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. Upon satisfactory proof of the applicant's inability to write and upon demand of an applicant for a Class II plumbing or heating license six weeks prior to an examination, the Board shall conduct the examination of that applicant orally, and shall not require that applicant to take a written examination as to examination inquiries answered other than by preparation of diagrams. Signed statements from two reliable citizens resident in the home county of the applicant shall constitute satisfactory proof of an applicant's inability to write. A person who fails to pass any examination shall not be reexamined until the next regular examination.

(c) To Whom Article Applies. — The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing or heating, but shall apply to those who make repairs, replacements, or modifications to an already installed fire sprinkler system.

(c1) Exemption. — The provisions of this Article shall not apply to a person who performs the on-site assembly of a factory designed drain line system for a manufactured home, as defined in G.S.

143-143.9(6), if the person (i) is a licensed manufactured home retailer, a licensed manufactured home set-up contractor, or a full-time employee of either, (ii) obtains an inspection by the local inspections department and (iii) performs the assembly according to the State Plumbing Code.

(d) Repealed by Session Laws 1979, c. 834, s. 7.

(d1) Expired.

(e) Posting License; License Number on Contracts, etc. — The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. The initial qualified licensee on a license is the permanent possessor of the license number under which that license is issued, except that a licensee, or the licensee's legal agent, personal representative, heirs or assigns, may designate in writing to the Board a qualified licensee to whom the Board shall assign the license number upon the payment of a ten dollar ($10.00) assignment fee. Upon such assignment, the qualified licensee becomes the permanent possessor of the assigned license number. Notwithstanding the foregoing, the license number may be assigned only to a qualified licensee who has been employed by the initial licensee's plumbing and heating company for at least 10 years or is a lineal relative, sibling, first cousin, nephew, niece, daughter-in-law, son-in-law, brother-in-law, or sister-in-law of the initial licensee. Each successive licensee to whom a license number is assigned under this subsection may assign the license number in the same manner as provided in this subsection.

(f) Repealed by Session Laws 1971, c. 768, s. 4.

(g) The Board may, in its discretion, grant to plumbing, heating, or fire sprinkler contractors licensed by other states license of the same or equivalent classification without written examination upon receipt of satisfactory proof that the qualifications of such applicants are substantially equivalent to the qualifications of holders of similar licenses in North Carolina and upon payment of the usual license fee.

(h) Expired. (1931, c. 52, s. 6; 1939, c. 224, s. 3; 1951, c. 953, ss. 1, 2; 1953, c. 254, s. 2; 1967, c. 770, ss. 1-6; 1971, c. 768, ss. 2-4; 1973, c. 1204; 1979, c. 834, ss. 4-7; 1981, c. 332, s. 1; 1983, c. 569, ss. 1, 2; 1989, c. 623, s. 1; 1989 (Reg. Sess., 1990), c. 842, s. 3; c. 978, s. 2; 1991, c. 355, s. 1; c. 507, s. 1; c. 761, s. 13; 1993, c. 78, s. 1; 1997-298, s. 1; 1997-382, ss. 1, 4.)

Effect of Amendments. — Session Laws 1997-298, s. 1, effective July 15, 1997, deleted subdivision (a)(8), which read "The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required"; added the second sentence of the second paragraph of subsection (b) [now the fourth sentence of subdivision (b)(3)]; and added subsection (c1).

Session Laws 1997-382, s.1, effective October 1, 1997, added the subdivision (b)(1), (b)(3), (b)(4), (b)(5), and (b)(6) designations; added subdivision (b)(2); inserted "or each restricted classification" in subdivision (b)(4); and added the second sentence of subdivision (b)(5).

Session Laws 1997-382, s. 4, effective August 11, 1997, substituted "obtains an inspection by" for "secures a permit from" in subsection (c1).

§ 87-22. License fee based on population; expiration and renewal; penalty.

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns of 10,000 inhabitants or more shall pay an annual license fee not exceeding seventy-five dollars ($75.00), and in cities or towns of less than 10,000 inhabitants an annual license fee not exceeding fifty dollars ($50.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars ($75.00) and an annual license fee not to exceed three hundred dollars ($300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. It shall be the duty of the secretary and treasurer to cause to be mailed to every licensee registered hereunder notice to the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, such notice to be mailed at least one month in advance of the expiration of the license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the fee therefor during the month of January in each year, the Board shall increase the license fee ten per centum (10%) for each month or fraction of a month that payment is delayed; provided that the penalty for nonpayment shall not exceed the amount of the annual fee, and provided further that the Board requires reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew the license at a fee not to exceed twenty-five dollars ($25.00). (1931, c. 52, s. 7; 1939, c. 224, s. 4; 1971, c. 768, s. 5; 1979, c. 834, s. 8; 1981, c. 332, s. 2; 1989, c. 623, s. 2; 1989 (Reg. Sess., 1990), c. 842, s. 4; 1997-382, s. 2.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, inserted the second sentence, substituted "the licensee's" for "his", and substituted "the license" for "said license" and "his license."

§ 87-23. Revocation or suspension of license for cause.

(a) The Board shall have power to revoke or suspend the license of or order the reprimand or probation of any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or who fails to comply with any provision or requirement of this Article, or the rules adopted by the Board, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a plumbing, heating, or fire sprinkler contractor, or any combination thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, or the rules of the Board, against any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is licensed under the provisions of this Article. All of the charges shall be in writing and investigated by the Board. Any proceedings on the charges shall be carried out by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Chapter, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. (1931, c. 52, s. 8; 1939, c. 224, s. 5; 1953, c. 1041, s. 5; 1973, c. 1331, s. 3; 1979, c. 834, s. 9; 1987, c. 827, s. 1; 1989 (Reg. Sess., 1990), c. 842, s. 5; 1997-382, s. 3.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, in subsection (a), inserted "or the rules adopted by the Board", inserted "or the rules of the Board", substituted "investigated by the Board" for "verified by the complainant, and such charges shall be heard and determined", inserted "Any proceedings on the charges shall be carried out", and made a stylistic change.

ARTICLE 4.

Electrical Contractors.

§ 87-39. Board of Examiners; appointment; terms; chairman; meetings; quorum; principal office; compensation; oath.

(a) The State Board of Examiners of Electrical Contractors shall continue as the State agency responsible for the licensing of persons engaging in electrical contracting within this State, and shall consist of one member from the North Carolina Department of Insurance to be designated by the Commissioner of Insurance; one member who has satisfied the requirements for an unlimited license as defined in G.S. 87-43.3 and who is a representative of the North Carolina Association of Electrical Contractors to be designated by the governing body of that organization; and five members to be appointed by the Governor: one from the faculty of The Greater University of North Carolina who teaches or does research in the field of electrical engineering, one who is serving as a chief electrical inspector of a municipality or county in North Carolina, one who has satisfied the requirements for an unlimited license as defined in G.S. 87-43.3 and who is a representative of the Carolinas Electrical Contractors Association operating a sole proprietorship, partnership or corporation located in North Carolina which is actively engaged in the business of electrical contracting, and two who have no ties with the construction industry and who represent the interest of the public at large.

(b) Members of the Board shall serve staggered seven-year terms. Each member shall serve until his or her successor is designated or appointed, and is duly qualified. Vacancies occurring during a term shall be filled for the remainder of that term by the authority that designated or appointed the departing member.

(c) Members of the Board shall not serve consecutive, complete terms. For purposes of this subsection, only a term of less than seven years that results from the filling of a vacancy is an incomplete term; a term of less than seven years that results from the successor's late designation or appointment is not an incomplete term.

(d) All members shall be residents of North Carolina during their tenure on the Board. Any member of the Board may be removed by the authority that designated or appointed that member for misconduct, incompetency, or neglect of duty.

(e) The Board shall hold regular meetings quarterly and may hold meetings on call of the chair. The chair shall be required to call a special meeting upon written request by two members of the Board. At its regular first quarter meeting, the Board shall elect from its membership a chair and a vice-chair, each to serve for one year. Four members of the Board shall constitute a quorum. The principal office of the Board shall be at such place as shall be designated by a majority of the members thereof. Payment of compensation and reimbursement of expenses of Board members shall be governed by G.S. 93B-5.

(f) Before entering upon the performance of his or her duties hereunder, each member of the Board shall take and file with the Secretary of State an oath in writing to properly perform the duties of his or her office as a member of the Board, and to uphold the Constitution of North Carolina and the Constitution of the United States. (1937, c. 87, s. 1; 1969, c. 669, s. 1; 1979, c. 904, ss. 1-3; 1989, c. 709, s. 1; 1995, c. 114, s. 1.)

Editor's Note. — Session Laws 1995, c. 114, s. 5, effective January 1, 1997, provides that, notwithstanding the provisions of § 87-39 to the contrary, the terms of members serving on the Board on January 1, 1997 shall expire upon completion of those terms. The following expiration of terms shall apply: the term of one member who represents the interest of the public at large on June 30, 2004; the representative of the Association of Electrical Contractors on June 30, 2005; the chief electrical inspector of a municipality or county on June 30, 2006; and the remaining appointments seven years after their successors' terms expire. Thereafter all terms shall be seven years. Members serving terms less than seven years are not serving complete terms and are eligible for redesignation or appointment to the Board.

Effect of Amendments. — The 1995 amendment, effective January 1, 1997, added the subsection (a), (e) and (f) designations; in subsection (a) deleted the last four sentences regarding the seven year length of terms, filling of vacancies during an unexpired term, North Carolina citizenship and residence of members during their tenure, and consecutive terms; added subsections (b), (c), and (d); in subsection (e) substituted the present third sentence for "The Board shall, at the first meeting following appointment of the new member in each year, meet and elect from its membership a chairman and vice chairman, each to serve for one year"; and made stylistic and gender neutral changes in the catchline and subsections (e) and (f).

§ 87-40. Secretary-treasurer.

At its regular first quarter meeting, the Board shall appoint a secretary-treasurer to serve for one year. The secretary-treasurer need not be a member of the Board, and the Board is authorized to employ a full-time secretary-treasurer and such other assistants and to make such other expenditures as may be necessary to the proper performance of the duties of the Board under this Article. The compensation and the duties of the secretary-treasurer shall be fixed by the Board, and the secretary-treasurer shall give bond in such sum and form as the Board shall require for the faithful performance of duty. The secretary-treasurer shall keep a record of the proceedings of said Board and shall receive and account for all moneys derived from the operations of the Board under this Article. (1937, c. 87, ss. 2, 3; 1969, c. 669, s. 1; 1995, c. 114, s. 2.)

§ 87-43.2. Issuance of license.

(a) A person, partnership, firm, or corporation shall be eligible to be licensed as an electrical contractor and to have such license renewed, subject to the provisions of this Article, provided:

(1) At least one listed qualified individual shall be regularly employed by the applicant at each separate place of business to have the specific duty and authority to supervise and direct electrical contracting done by or in the name of the licensee;

(2) An application is filed with the Board which contains a statement of ownership, states the names and official positions of all employees who are listed qualified individuals and provides such other information as the Board may reasonably require;

(3) The applicant, through an authorized officer or owner, shall agree in writing to report to the Board within five days any additions to or loss of the employment of listed qualified individuals; and

(4) The applicant furnishes, upon the initial application for a license, a bonding ability statement completed by a bonding company licensed to do business in North Carolina, verifying the applicant's ability to furnish performance bonds for electrical contracting projects having a value in excess of twenty-five thousand dollars ($25,000) for the intermediate license classification and in excess of seventy-five thousand dollars ($75,000) for the unlimited license classification. In lieu of furnishing the bonding ability statement, the applicant may submit for evaluation and specific approval of the Board other information certifying the adequacy of the applicant's financial ability to engage in projects of the license classification applied for. The bonding ability statement or other financial information must be submitted in the same name as the license to be issued. If the firm for which a license application is filed is owned by a sole proprietor, the bonding ability statement or other financial information may be furnished in either the firm name or the name of the proprietor. However, if the application is submitted in the name of a sole proprietor, the applicant shall submit information verifying that the person in whose name the application is made is in fact the sole proprietor of the firm.

(5) Repealed by Session Laws 1989, c. 709, s. 5, effective August 1, 1989.

(b) A license shall indicate the names and classifications of all listed qualified individuals employed by the applicant. A license shall be cancelled if at any time no listed qualified individual is regularly employed by the applicant; provided, that work begun prior to such cancellation may be completed under such conditions as the Board shall direct; and provided further that no work for which a license is required under this Article may be bid for, contracted for or initiated subsequent to such cancellation until said license is reinstated by the Board. (1937, c. 87, s. 5; 1951, c. 650, ss. 1-2½; 1953, c. 595; 1961, c. 1165; 1969, c. 669, s. 1; 1989, c. 709, s. 5; 1995, c. 509, s. 135.2(e).)

§ 87-43.3. Classification of licenses.

An electrical contracting license shall be issued in one of the following classifications: Limited, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of twenty-five thousand dollars ($25,000) and on which the equipment or installation in the contract is rated at not more than 600 volts; Intermediate, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of seventy-five thousand dollars ($75,000); Unlimited, under which a licensee shall be permitted to engage in any electrical contracting project regardless of value; and such other special Restricted classifications as the Board may establish from time to time to provide, (i) for the licensing of persons, partnerships, firms or corporations wishing to engage in special restricted electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited nature, and (ii) for the licensing of persons, partnerships, firms or corporations wishing to engage in electrical contracting work as an incidental part of their primary business, which is a lawful business other than electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited nature directly in connection with said primary business. The Board may establish appropriate standards for each classification, such standards not to be inconsistent with the provisions of G.S. 87-42. (1969, c. 669, s. 1; 1973, c. 1228, s. 1; 1975, c. 29; 1989, c. 709, s. 6; 1995, c. 114, s. 6.)

Editor's Note. — Session Laws 1995, c. 114, s. 6, amended this section effective July 1, 1995, and applicable to electrical contracting projects commenced on or after that date.

§ 87-43.4. Residential dwelling license.

There is hereby created a separate license for electrical contractors which shall permit an electrical contractor to engage in electrical contracting projects pertaining to single-family detached residential dwellings. The value of a single project pertaining to a single-family detached residential dwelling shall not be in excess of the maximum value, established in G.S. 87-43.3, of a single project engaged in by a licensee with a license classified as limited. The Board shall establish appropriate standards for this new license. The standards of knowledge, experience and proficiency shall be those appropriate for that license. (1973, c. 1343; 1995, c. 114, s. 3.)

Editor's Note. — Session Laws 1995, c. 114, s. 3, amended this section effective July 1, 1995, and applicable to electrical contracting projects commenced on or after that date.

§ 87-47. Penalties imposed by Board; enforcement procedures.

(a) Repealed by Session Laws 1989, c. 709, s. 9.

(a1) The following activities are prohibited:

(1) Offering to engage or engaging in electrical contracting without being licensed.

(2) Selling, transferring, or assigning a license, regardless of whether for a fee.

(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical contracting.

(4) Being convicted of a crime involving fraud or moral turpitude.

(5) Engaging in fraud or misrepresentation to obtain a certification, obtain or renew a license, or practice electrical contracting.

(6) Engaging in false or misleading advertising.

(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical contracting.

(a2) The Board may administer one or more of the following penalties if the applicant, licensee, or qualified individual has engaged in any activity prohibited under subsection (a1) of this section:

(1) Reprimand.

(2) Suspension from practice for a period not to exceed 12 months.

(3) Revocation of the right to serve as a listed qualified individual on any license issued by the Board.

(4) Revocation of license.

(5) Probationary revocation of license or the right to serve as a listed qualified individual on any license issued by the Board, upon conditions set by the Board as the case warrants, and revocation upon failure to comply with the conditions.

(6) Revocation of certification.

(7) Refusal to certify an applicant or a qualified individual.

(8) Refusal to issue a license to an applicant.

(9) Refusal to renew a license.

(a3) In addition to administering a penalty under subsection (a2) of this section, the Board may assess a civil penalty of not more than one thousand dollars ($1,000) against a licensee or a qualified individual who has engaged in an activity prohibited under subsection (a1) of this section or has violated another provision of this Article or a rule adopted by the Board. Civil penalties collected under this subsection shall be deposited in the General Fund of North Carolina as nontax revenue.

In determining the amount of a civil penalty, the Board shall consider:

(1) The degree and extent of harm to the public safety or to property, or the potential for harm.

(2) The duration and gravity of the violation.

(3) Whether the violation was committed willfully or intentionally, or reflects a continuing pattern.

(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.

(5) The violator's prior disciplinary record with the Board.

(6) Whether and the extent to which the violator profited by the violation.

(a4) Any person, including the Board and its staff on their own initiative, may prefer charges pursuant to this section, and such charges must be submitted in writing to the Board. The Board may, without a hearing, dismiss charges as unfounded or trivial. The Board may issue a notice of violation based on the charges, to be served by a member of the Board's staff or in accordance with Rule 4 of the Rules of Civil Procedure, against any person, partnership, firm, or corporation for engaging in an activity prohibited under subsection (a1) of this section or for a violation of the provisions of this Article or any rule adopted by the Board. The person or other entity to whom the notice of violation is issued may request a hearing by notifying the Board in writing within 20 days after being served with the notice of violation. Hearings shall be conducted by the Board or an administrative law judge pursuant to Article 3A of Chapter 150B of the General Statutes. In conducting hearings, the Board may remove the hearings to any county in which the offense, or any part thereof, was committed if in the opinion of the Board the ends of justice or the convenience of witnesses require such removal.

(a5) If the person or other entity does not request a hearing under subsection (a4) of this section, the Board shall enter a final decision and may impose penalties against the person or other entity. If the person or other entity is not a licensee or a qualified individual, the Board may impose penalties under subsection (a2) of this section. If the person or other entity is a licensee or a qualified individual, the Board may impose penalties under subsection (a2) of this section, subsection (a3) of this section, or both.

(b) The Board shall adopt and publish rules, in accordance with Chapter 150B of the General Statutes and consistent with the provisions of this Article, governing the matters contained in this section.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding charges and notices of violation pursuant to this section. This record shall include, for each person, partnership, firm, and corporation charged or notified of a violation, the date and nature of each charge or notice of violation, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reinstate a qualified individual's certification and may reinstate a license after having revoked it, provided that one year has elapsed from revocation until reinstatement and that the vote of the Board for reinstatement is by a majority of its members.

The Board shall immediately notify the Secretary of State and the electrical inspectors within the licensee's county of residence upon the revocation of a license or the reissuance of a license which had been revoked.

(e) In any case in which the Board is entitled to convene a hearing to consider imposing any penalty provided for in subsection (a2) or (a3) of this section, the Board may accept an offer in compromise of the charge, whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000). Penalties collected by the Board under this subsection shall be deposited in the General Fund of North Carolina as nontax revenue. (1969, c. 669, s. 1; 1973, c. 1331, s. 3; 1979, c. 904, s. 11; 1989, c. 709, s. 9; 1995, c. 114, s. 4.)

CASE NOTES

Hearings on Charges Required. — Though the language is not explicit in requiring that the Board of Examiners of Electrical Contractors hold a hearing on charges, such a requirement is implicit both in the language referring to "hearings of charges" and in the stated purpose of the statute governing the jurisdiction of the Board to hear such charges. Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994).

It would be contrary to the intent expressed in subsection (a1), that of protecting the public, to determine that plaintiff was not entitled to a hearing and decision on charges brought to effectuate that very purpose. Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 338 N.C. 288, 449 S.E.2d 188 (1994).

ARTICLE 5.

Refrigeration Contractors.

§ 87-52. State Board of Refrigeration Examiners; appointment; term of office.

For the purpose of carrying out the provisions of this Article, the State Board of Refrigeration Examiners is created, consisting of seven members appointed by the Governor to serve seven-year staggered terms. The Board shall consist of one member who is a wholesaler or a manufacturer of refrigeration equipment; one member from an engineering school of The University of North Carolina, one member from the Division of Public Health of The University of North Carolina, two licensed refrigeration contractors, one member who has no ties with the construction industry to represent the interest of the public at large, and one member with an engineering background in refrigeration. The term of office of one member shall expire each year. Vacancies occurring during a term shall be filled by appointment of the Governor for the unexpired term. Whenever the term "Board" is used in this Article, it means the State Board of Refrigeration Examiners. No Board member shall serve more than one complete consecutive term. (1955, c. 912, s. 1; 1959, c. 1206, s. 2; 1973, c. 476, s. 128; 1979, c. 712, s. 1; 1995, c. 376, s. 1.)

Editor's Note. — Session Laws 1995, c. 376, s. 5, provides: "The term of the public member of the Board that is currently scheduled to expire first shall expire on October 1, 1995, and the initial member with the engineering background in refrigeration appointed pursuant to this act shall serve from the date of appointment to January 1, 2001."

§ 87-58. Definitions; contractors licensed by Board; examinations.

(a) As applied in this Article, "refrigeration trade or business" is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political subdivisions, provided however, that this Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently installed, and provided, further, that the provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in North Carolina General Statutes, Chapter 87, Article 2; and provided, further, that this Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to any person, firm or corporation engaged in the business of selling, repairing and installing any air-conditioning units, devices or systems for the purpose of cooling offices, buildings, houses, works, manufacturing plants, or any machinery, manufactured article or processing of material.

(b) The term "refrigeration contractor" means a person, firm or corporation engaged in the business of refrigeration contracting.

(b1) The term "transport refrigeration contractor" means a person, firm, or corporation engaged in the business of installation, maintenance, servicing, and repairing of transport refrigeration.

(c) Any person, firm or corporation who for valuable consideration engages in the refrigeration business or trade as herein defined shall be deemed and held to be in the business of refrigeration contracting.

(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination. A person who fails to pass any examination shall not be reexamined until the next regular examination.

(e) Repealed by Session Laws 1979, c. 843, s. 1.

(f) Licenses Granted without an Examination. — Persons who had an established place of business prior to July 1, 1979, and who produce satisfactory evidence that they are engaged in the refrigeration business as herein defined in any city, town or other area in which Article 5 of Chapter 87 of the General Statutes did not previously apply shall be granted a certificate of license, without examination, upon application to the Board and payment of the license fee, provided completed applications shall be made prior to June 30, 1981.

(g) The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities.

(h) A transport refrigeration contractor having an established place of business doing transport refrigeration contracting prior to October 1, 1995, shall be granted a transport refrigeration contracting specialty license, without examination, if the person produces satisfactory evidence the person is engaged in transport refrigeration contracting, pays the required license fee, and applies to the Board prior to January 1, 1997. The current specialty license shall be posted in accordance with subsection (g) of this section.

(i) Nothing in this Article shall relieve the holder of a license issued under this section from complying with the building or electrical codes, statutes, or ordinances of the State or of any county or municipality or from responsibility or liability for negligent acts in connection with refrigeration contracting work. The Board shall not be liable in damages, or otherwise, for the negligent acts of licensees. (1955, c. 912,.s. 7; 1959, c. 1206, s. 1; 1979, c. 843, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1082, s. 5; 1989, c. 770, s. 13; 1995, c. 376, s. 2.)

§ 87-59. Revocation or suspension of license for cause.

(a) The Board shall have power to revoke or suspend the license of any refrigeration contractor who is guilty of any fraud or deceit in obtaining a license, or who fails to comply with any provision or requirement of this Article, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a refrigeration contractor as defined in this Article. Any person may prefer charges of fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, against any refrigeration contractor who is licensed under the provisions of this Article. All charges shall be in writing and verified by the complainant, and shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Article, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings of the Board, and the disposition of the matter.

(d) In a case in which the Board is entitled to convene a hearing to consider a charge under this section, the Board may accept an offer to compromise the charge, whereby the accused shall pay to the

Board a penalty not to exceed one thousand dollars ($1,000). The funds derived from the penalty shall be deposited into the General Fund.

(e) All records, papers, and other documents containing information collected and compiled by the Board, or its members or employees, as a result of investigations, inquiries, or interviews conducted in connection with a licensing or disciplinary matter, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. (1955, c. 912, s. 8; 1973, c. 1331, s. 3; 1979, c. 712, s. 3; 1989, c. 770, s. 14; 1995, c. 376, s. 3.)

Editor's Note. — Session Laws 1995, c. 376, s. 5, provides: "G.S. 87-59(d), as enacted by this act, applies to hearings convened on or after the effective date [October 1, 1995]."

§ 87-61. Violations made misdemeanor; employees of licensees excepted.

Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of refrigeration contracting as defined in this Article, without first having been licensed to engage in the business, or businesses, as required by the provisions of this Article; or any person, firm or corporation holding a refrigeration license under the provisions of this Article who shall practice or offer to practice or carry on any type of refrigeration contracting not authorized by the license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this Article, shall be guilty of a Class 2 misdemeanor. The Board may, in its discretion, use its funds to defray the costs and expenses, legal or otherwise, in the prosecution of any violation of this Article. Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of this Article, shall not be construed to have engaged in the business of refrigeration contracting. (1955, c. 912, s. 10; 1993, c. 539, s. 607; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 376, s. 4.)

Article 7.

North Carolina Well Construction Act.

§ 87-85. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Abandoned well" means a well whose use has been discontinued, or which is in such a state of disrepair that continued use for obtaining groundwater or other useful purpose is impracticable.

(2) "Aquifer" means a geologic formation, group of such formations, or a part of such a formation that is water bearing.

(3) "Artesian well" means a well tapping a confined or artesian aquifer.

(4) "Environmental Management Commission" means the North Carolina Environmental Management Commission or its successor, unless otherwise indicated.

(5) "Construction of wells" means all acts necessary to construct wells for any intended purpose or use, including the location and excavation of the well; placement of casings, screens and fittings; development and testing.

(5a) "Department" means the Department of Environment and Natural Resources unless otherwise indicated.

(6) "Installation of pumps and pumping equipment" means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrances to the well and establishing seals.

(7) "Municipality" means a city, town, county, district, or other public body created by or pursuant to State law, or any combination thereof acting cooperatively or jointly.

(8) "Nonpotable mineralized water" means brackish, saline, or other water containing minerals of such quantity or type as to render the water unsafe, harmful or generally unsuitable for human consumption and general use.

(9) "Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(10) "Polluted water" means water containing organic or other contaminants of such type and quantity as to render it unsafe, harmful or unsuitable for human consumption and general use.

(11) "Pumps" and "pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining groundwater including well seals.

(12) "Repair" means work involved in deepening, reaming, sealing, installing or changing casing depths, perforating, screening, or cleaning, acidizing or redevelopment of a well excavation, or any other work which results in breaking or opening the well seal.

(13) "Water supply well" means any well intended or usable as a source of water supply, but not to include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).

(14) "Well" means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer.

(15) "Well driller," "driller" or "water well contractor" means any person, firm, or corporation engaged in the business of constructing wells.

(16) "Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction

between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.

(17) "Operation of wells" means the process, frequency, and duration of withdrawing water or other fluids from a well by any means. (1967, c. 1157, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 496, s. 1; 1989, c. 727, s. 218(21); 1997-358, s. 4; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-358, s. 10, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-358, s. 4, effective August 4, 1997, deleted the last sentence of subdivision (14), which read "Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens)."

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 87-91. Notice of violation; remedial action order.

(a) Whenever the Environmental Management Commission has reasonable grounds to believe that there has been a violation of this Article or any rule adopted pursuant to this Article, the Environmental Management Commission or Department shall give written notice to the person or persons alleged to be in violation. The notice shall identify the provision of this Article or rule adopted pursuant to this Article alleged to be violated and the facts alleged to constitute the violation. The Environmental Management Commission may also issue an order requiring specific remedial action. An order requiring remedial action shall specify the action to be taken, the date by which the action must be completed, the possible consequences of failing to comply with the order, and the procedure by which the alleged violator may seek review of the order.

(b) The notice may be served by any means authorized under G.S. 1A-1, Rule 4. (1967, c. 1157, s. 9; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 15; 1997-358, s. 7; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-358, s. 10, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-358, s. 7, effective August 4, 1997, substituted "Notice of violation; remedial action order" for "Notice" in the catchline, and rewrote this section.

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, purported to substitute "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in subsection (b).

§ 87-94. Civil penalties.

(a) Any person who violates any provision of this Article, Article 7A of this Chapter, any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

(b) Repealed by Session Laws 1997-358, s. 3, effective August 4, 1997.

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

(e) Repealed by Session Laws 1997-358, s. 3, effective August 4, 1997.

(f) Repealed by 1995 (Reg. Sess., 1996), c. 743, s. 2, effective July 1, 1996. (1967, c. 1157, s. 12; 1985, c. 728, s. 3; 1987, c. 246, s. 2; 1989, c. 727, s. 218(22); 1989 (Reg. Sess., 1990), c. 1036, s. 10; 1995 (Reg. Sess., 1996), c. 743, s. 2; 1997-358, s. 3; 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1997-358, s. 10, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, repealed subsection (f), regarding delegation of powers and duties by the Secretary of Environment, Health, and Natural Resources.

Session Laws 1997-358, s. 3, effective August 4, 1997, substituted "Article, Article 7A of this Chapter" for "Article, or" in subsection (a); deleted subsection (b) concerning notice; substituted "G.S. 143-215.6A" for "G.S. 143-215.6" in subsection (c); and deleted subsection (e) concerning nonpayment of civil penalties.

Session Laws 1997-443, s. 11A.119, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 87-95. Injunctive relief.

Upon violation of any of the provisions of or any order issued pursuant to this Article, or duly adopted rule of the Commission implementing the provisions of this Article, the Secretary of Environment and Natural Resources may, either before or after the institution of proceedings for the collection of the penalty imposed by this Article for such violations, request the Attorney General to institute a civil action in the superior court in the name of the State upon the relation of the Department of Environment and Natural Resources for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same. (1967, c. 1157, s. 13; 1973, c. 1262, s. 23; 1975, c. 842, s. 1; 1977, c. 771, s. 4; 1989, c. 727, s. 16; 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

ARTICLE 7A.

Well Contractors Certification.

§ 87-98.1. Title.

This Article may be cited as the North Carolina Well Contractors Certification Act. (1997-358, s. 2.)

Editor's Note. — Session Laws 1997-358, s. 9, provides that, unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.8, the Well Contractors Certification Commission shall issue a well contractor certificate without examination to any person who, since July 1, 1992, has been actively and continuously engaged in well contractor activity and whe has been continuously registered with the Department or employed by a firm or corporation certification, a person must submit an application to the Commission and pay the annual fee prior to January 1, 1999. A well contractor who is certified under this section must continuously maintain the certification in good standing; a certificate issued under this section that lapses, is suspended or is revoked may not be renewed or reinstated, and a person whose certification lapses, is suspended, or is revoked must apply for certification by examination to be recertified.

Session Laws 1997-358, s. 10, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act."

Session Laws 1997-358, s. 11, made this Article effective August 4, 1997, except that G.S. 87-98.4(a) and G.S. 87-98.12 are effective January 1, 1999.

§ 87-98.2. Definitions.

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) Commission. — The Well Contractors Certification Commission.

(2) Department. — The Department of Environment and Natural Resources.

(3) Person. — A natural person.

(4) Secretary. — The Secretary of Environment and Natural Resources.

(5) Well contractor. — A person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.

(6) Well contractor activity. — The construction, installation, repair, alteration, or abandonment of any well. (1997-358, s. 2; 1997-443, s. 11A.119(b).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 87-98.3. Purpose.

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors. (1997-358, s. 2.)

§ 87-98.4. (See editor's note for effective date) Well contractor certification required; applicability.

(a) **(Effective January 1, 1999)** Certification Required. — No well contractor shall perform any well contractor activity without being certified under this Article. The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(b) Applicability. — This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.

(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person. (1997-358, s. 2.)

Editor's Note. — Session Laws 1997-358, s. 11, made subsection (a) of this section effective January 1, 1999. The remainder of this section was effective August 4, 1997.

§ 87-98.5. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State. (1997-358, s. 2.)

§ 87-98.6. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant. (1997-358, s. 2.)

§ 87-98.7. Issuance and renewal of certificates; temporary certification.

(a) Issuance. — An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. — A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. — A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article. (1997-358, s. 2.)

§ 87-98.8. Disciplinary actions.

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.

(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.

(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.

(4) Failed to satisfactorily complete continuing education requirements established by the Commission. (1997-358, s. 2.)

§ 87-98.9. Fees; Well Construction Fund.

(a) Fees. — The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred dollars ($100.00), the annual fee may not exceed two hundred dollars ($200.00) per year, and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. — The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article. (1997-358, s. 2.)

§ 87-98.10. Promotion of training.

The Commission and the Secretary may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors. (1997-358, s. 2.)

§ 87-98.11. Responsibilities of well contractors.

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities. (1997-358, s. 2.)

§ 87-98.12. (Effective January 1, 1999) Continuing education requirements.

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses. (1997-358, s. 2.)

Editor's Note. — Session Laws 1997-358, s. 11, made this section effective January 1, 1999.

§ 87-98.13. Injunctive relief.

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article. (1997-358, s. 2.)

ARTICLE 8.

Underground Damage Prevention.

§ 87-102. Notice required prior to excavation.

CASE NOTES

Stated in Lexington Tel. Co. v. Davidson Water, Inc., 122 N.C. App. 177, 468 S.E.2d 66 (1996).

§ 87-106. Exceptions.

CASE NOTES

Applied in Lexington Tel. Co. v. Davidson Water, Inc., 122 N.C. App. 177, 468 S.E.2d 66 (1996).

§ 87-107. Duties of the utility owners.

CASE NOTES

Cost of Locating Underground Utilities. — So long as the excavating utility provides notice in conformance with this chapter, the locating utility cannot charge the excavating utility for locating its underground cables when the location of such lines is necessary to assure the excavating utility's maintenance of service to customers, even when the locating is required to be done outside of normal business hours. Lexington Tel. Co. v. Davidson Water, Inc., 122 N.C. App. 177, 468 S.E.2d 66 (1996).

§ 87-108. Absence of utility location.

CASE NOTES

Stated in Lexington Tel. Co. v. Davidson Water, Inc., 122 N.C. App. 177, 468 S.E.2d 66 (1996).

Chapter 88.

Cosmetic Art.

Sec.
88-1. Practice of cosmetology regulated; permits for operation of cosmetic art shops.
88-23. Rules and regulations of Board; inspections; granting of certificates to Board members; employment of former Board members.
88-28.1. Restraining orders against persons engaging in illegal practices.

§ 88-1. Practice of cosmetology regulated; permits for operation of cosmetic art shops.

(a) No person or combination of persons shall, for pay or reward, either directly or indirectly, practice or attempt to practice cosmetic art as hereinafter defined in the State of North Carolina without a certificate of registration, either as a registered apprentice or as a registered "cosmetologist," issued pursuant to the provisions of this Chapter by the State Board of Cosmetic Art Examiners. The practice of cosmetic art shall not be performed outside of a licensed and regularly inspected beauty establishment, unless the practice is allowed under G.S. 88-7.1 or occurs in a barbershop licensed under Chapter 86A of the General Statutes. A person who practices cosmetic art in a barbershop must comply with G.S. 86A-15.

(b) The operator of a cosmetic art shop, beauty parlor or hairdressing establishment may employ unlicensed personnel to do shampooing only, where the shampooing is done under the supervision of a registered cosmetologist. As used in this paragraph, "shampooing" includes only the application of shampoo to hair and the removal of the shampoo from the hair, and does not include any arranging, dressing, waving, marcelling or other treatment of hair. This paragraph does not apply to barbershops. This paragraph shall not apply to the following counties: Guilford, Mecklenburg, Onslow, Richmond, Sampson.

(c) On and after February 1, 1976, any person, firm or corporation, before establishing or opening a cosmetic art shop not heretofore licensed by the State Board of Cosmetic Art, shall make application to the Board, on forms to be furnished by the Board, for a permit to operate a cosmetic art shop. As a part of the application, the person, firm, or corporation shall list all registered cosmetologists who will practice cosmetic art in that cosmetic art shop and shall identify each cosmetologist as an employee or a booth renter. The shop of such applicant shall be inspected and approved by the State Board of Cosmetic Art by an agent designated for such purpose by the Board before such cosmetic art shop shall be opened for business. It shall be unlawful to open a new cosmetic art shop for the practice of cosmetology until such shop has been inspected, as heretofore required, and determined by the Board to be in compliance with the requirements set forth in this Chapter. Upon the determination by the Board that the applicant has complied with the requirements of this Chapter, the Board shall issue to such applicant a permit to operate a cosmetic art shop. A fee of twenty-five dollars ($25.00) shall be paid to the Board for the inspection of a cosmetic art shop. Such fee must accompany the application for a permit to operate a cosmetic art shop at the time such application is filed with the Board.

(d) All cosmetic art shops in operation as of February 1, 1976, shall be required to make application to the Board of Cosmetic Art, on forms supplied by the Board, for a permit to operate. The fee required for such permit shall be three dollars ($3.00) per active booth in said shop.

(e) All permits shall be renewed as of the first day of February of each and every year, and the fee for annual renewal of cosmetic art shop permits shall be as set forth in G.S. 88-21. As a part of the renewal of the permit, the person, firm, or corporation shall list all registered cosmetologists who currently practice cosmetic art in that cosmetic art shop and shall identify each cosmetologist as an employee or a booth renter. No permit or certificate shall be transferable from one location to another or from one owner to another at the same location. Each cosmetic art shop permit shall be conspicuously posted within such cosmetic art shop for which same is issued. (1933, c. 179, s. 1; 1973, c. 1481, ss. 1, 2; 1975, c. 7; c. 857, s. 1; 1977, cc. 155, 472; 1981, c. 615, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 990; 1985, c. 125; 1985 (Reg. Sess., 1986), c. 833; 1987 (Reg. Sess., 1988), c. 965; 1993, c. 22, s. 2; c. 54, s. 1; 1995 (Reg. Sess., 1996), c. 605, s. 15.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subsection (a), substituted "No" for "On and after June 30, 1933, no", substituted "Examiners. The" for "Examiners hereinafter established and, except as provided in G.S. 88-7.1, the", added "unless the practice is allowed under G.S. 88-7.1 or occurs in a barbershop licensed under Chapter 86A of the General Statutes" in the next to last sentence, and added the last sentence.

§ 88-23. Rules and regulations of Board; inspections; granting of certificates to Board members; employment of former Board members.

(a)(1) The State Board of Cosmetic Art Examiners may adopt a reasonable curriculum and rules for recognized schools and colleges of beauty culture and may adopt reasonable rules for the sanitary management of cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies and training schools, hereinafter called shops and schools, and to have the curriculum and rules and the sanitary rules enforced. The Board may not require a shop to be separated from a building or room used for the purpose of providing barber services. The duly authorized agents of the Board shall have authority to enter upon and inspect any shop or school at any time during business hours. A copy of the curriculum and rules and the sanitary rules shall be furnished from the office of the Board or by an agent of the Board to the owner or manager of each shop or school. The copy shall be kept posted in a conspicuous place in each shop and school, and a copy of the curriculum and rules for schools shall be kept posted in a conspicuous place in each school. Each shop and school shall comply with the rules.

(2) The Board shall adopt regulations prohibiting the use of commercial chemicals of unknown content by persons registered under this Chapter. For purposes of this section, "commercial chemicals" are those products sold only through beauty and barber supply houses and not available to the general public.

(3) The Board shall adopt regulations instructing persons registered under this Chapter in the proper use and application of commercial chemicals where no manufacturer's instructions are included. In the alternative, the Board shall prohibit the use of such commercial chemicals by persons registered under this Chapter.

(b) The Board of Cosmetic Art shall not hereafter be authorized to grant teacher's or instructor's certificates to board members during their term of appointment on said Board. Teacher's or instructor's certificates granted to members by official action of the Board, without prior examination, shall be rescinded upon such member's termination from the Board of Cosmetic Art.

Any person appointed to the Board shall be prohibited from being employed by the Board for a period of one year after that person's term of appointment expires, whether or not that person served his whole term. (1933, c. 179, s. 23; 1935, c. 54, s. 5; 1973, c. 476, s. 128; 1975, c. 857, s. 9; 1981, c. 614, s. 1; c. 615, s. 14; 1995 (Reg. Sess., 1996), c. 605, s. 16.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subdivision (a)(1), in the first sentence, substituted "may adopt" for "shall have the authority to make", substituted "may adopt reasonable rules" for "make reasonable rules and regulations", and substituted "the curriculum and rules and the sanitary rules enforced" for "such curriculum and rules and the sanitary rules and regulations enforced"; inserted the present second sentence; substituted "the" for "said" preceding "Board" in the present third sentence; in the present fourth and fifth sentences, deleted "and regulations" following "sanitary rules", substituted "an agent of the Board" for "the above mentioned authorized agents" following "the Board or by", substituted "school. The" for "school in the State, and such" following "manager of each shop or", deleted "recognized" following "rules for", deleted "and colleges of beauty culture" following "schools", and deleted "and the rules and regulations complied with as required by this Chapter" following "place in each school"; and added the last sentence.

§ 88-28.1. Restraining orders against persons engaging in illegal practices.

If it is found that any licensed cosmetologist, cosmetic art shop, or other person subject to the provisions of this Chapter is violating any rules and regulations adopted by the State Board of Cosmetic Art Examiners or any provisions of G.S. 88-28, then the Department of Health and Human Services, any local health director, or the State Board of Cosmetic Art Examiners shall give notice to the person of the violation and apply to the superior court for injunctive relief to restrain such person from continuing such illegal practices. If, upon such application, it shall appear to the court that such person has violated and/or is violating any of the said rules and regulations or any provisions of Chapter 88, section 28, of the General Statutes of North Carolina [G.S. 88-28], the court may issue an order restraining any further violations thereof. All such actions for injunctive relief shall be governed by the provisions of Article 37 of Chapter 1 of the General Statutes: Provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under any of the provisions of this Chapter. Actions under this section shall be commenced in the county in which the respondent resides or has his principal place of business or in which the alleged acts occurred. (1949, c. 505, s. 1; 1973, c. 476, s. 128; 1975, c. 857, s. 10; 1981, c. 614, s. 3; c. 615, s. 18; 1997-443, s. 11A.118(a); 1997-502, s. 8.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Session Laws 1997-502, s. 8, effective January 1, 1998, and applicable to contracts and agreements entered into on or after that date, substituted "local" for "county or district" in the first sentence.

Chapter 88A.

Electrolysis Practice Act.

Sec.
88A-5. Creation and membership of Boad.
Sec.
88A-23. Reports and immunity from suit.

§ 88A-5. Creation and membership of Board.

(a) The North Carolina Board of Electrolysis Examiners is created. The Board shall consist of five members as follows:

(1) Three electrologists who have engaged in the practice of electrolysis for at least five years, one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and one of whom shall be appointed by the Governor.

(2) A physician licensed under Chapter 90 of the General Statutes, who shall be nominated by the North Carolina Medical Board and appointed by the Governor.

(3) A public member, appointed by the Governor, who has not practiced electrolysis, who is not in training to become an electrologist, and who is not related to anyone who would be prohibited by this subdivision from serving on the Board as a public member.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member shall be appointed for a term of three years and shall serve until a successor is appointed. Of the members initially appointed, one of the electrologist members shall serve a term of one year. The public member and the second electrologist member shall serve a term of two years. The physician member and the third electrologist member shall serve a term of three years. The terms of all initial appointments shall commence within 30 days of the effective date of this act. No member may serve more than two consecutive full terms.

(d) Vacancies shall be filled by the appropriate appointing authority within 30 days after the position is vacated. Appointees shall serve the remainder of the unexpired term and until their successors have been appointed and qualified.

(e) The Board may remove any of its members for gross neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from all Board business until the charges are resolved. The Governor may also remove any member of the Board which he appoints.

(f) Each member of the Board shall receive per diem compensation and reimbursement for travel and subsistence in the amounts the Board votes upon and records in its minutes, provided the amounts do not exceed the amounts specified in G.S. 93B-5.

(g) The Board shall elect a Chairman, a Vice-Chairman, a Treasurer, and such other officers as are deemed necessary by the Board.

All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(h) The Board shall hold at least two meetings each year to conduct its business, and shall adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of the members shall constitute a quorum. (1989 (Reg. Sess., 1990), c. 1033, s. 1; 1995, c. 94, s. 6.)

§ 88A-23. Reports and immunity from suit.

Any person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that any person is in violation of this Chapter, shall report the relevant facts to the Board. Upon the receipt of such charge, or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false. (1989 (Reg. Sess., 1990), c. 1033, s. 1; 1995, c. 509, s. 36.)

Chapter 89A.

Editor's Note. — The legislation and annotations affecting Chapter 89A have been included in a recently published replacement chapter.

Chapter 89C.

Engineering and Land Surveying.

Sec.
89C-25. Limitations on application of Chapter.
89C-26. [Repealed.]

§ 89C-25. Limitations on application of Chapter.

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superin-

tendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission. (1921, c. 1, s. 13; C.S., s. 6055(o); 1951, c. 1084, s. 1; 1975, c. 681, s. 1; 1995, c. 146, s. 1; 1995 (Reg. Sess., 1996), c. 742, s. 35; 1997-454, s. 1.)

Effect of Amendments. — The 1997 amendment, effective March 1, 1997, inserted "practice by those employees of the Natural Resources Conservation Service having federal engineerng job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands" in subdivision (6); added subdivision (10); and made punctuation changes.

§ 89C-26: Repealed by Session Laws 1997-309, s. 10, effective October 1, 1997.

Chapter 89D.

Editor's Note. — The legislation and annotations affecting Chapter 89D have been included in a recently published replacement chapter.

Chapter 89E.
Geologists Licensing Act.

Sec.
89E-3. Definitions.
89E-22. Misdemeanor.

§ 89E-1. Short title.

Cross References. — As to limited liability companies and their powers, see § 57C-2-01 et seq.

Legal Periodicals. — For article, "The Learned Profession Exemption of the North Carolina Deceptive Trade Practices Act: The Wrong Bright Line?," see 15 Campbell L. Rev. 223 (1993).

§ 89E-3. Definitions.

When used in this Chapter, unless the context otherwise requires:

(1) "Board" means the North Carolina Board for Licensing of Geologists.

(2) "Geologist". The term "geologist", within the intent of this Chapter, shall mean a person who is trained and educated in the science of geology.

(3) The term "geologist-in-training" means a person who has taken and successfully passed the portion of professional examination covering fundamental or academic geologic subjects, prior to his completion of the requisite years of experience in geologic work as provided for in this Chapter.

(4) "Geology" means the science dealing with the earth and its history; investigation, prediction and location of the materials and structures which compose it; the natural processes that cause change in the earth; and the applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases and other materials for the benefit of mankind. This definition shall not include any of the following:

  a. Service or creative works, the adequate performance of which requires engineering education, training, and experience.

  b. The assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(5) The term "good moral character" means such character as tends to ensure the faithful discharge of the fiduciary duties of the licensed geologist to his client.

(6) "License" means a certificate issued by the Board recognizing the individual named in this certificate as meeting the requirements for licensing under this Chapter.

(7) "Licensed geologist" means a person who is licensed as a geologist under the provisions of this Chapter.

(8) "Public practice of geology" means the performance for others of geological service or work in the nature of work or consultation, investigation, surveys, evaluations, planning, mapping and inspection of geological work, in which the performance is related to the public welfare of safeguarding

of life, health, property and the environment, except as specifically exempted by this Chapter. The definition shall not include or allow the practice of engineering as defined in Chapter 89C of the North Carolina General Statutes.

(9) The term "qualified geologist" means a person who possesses all of the qualifications specified in this Chapter for licensing except that he or she is not licensed.

(10) The term "responsible charge of work" means the independent control and direction by the use of initiative, skill and independent judgment of geological work or the supervision of such work.

(11) The term "subordinate" means any person who assists a licensed geologist in the practice of geology without assuming the responsible charge of work. (1983 (Reg. Sess., 1984), c. 1074, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.10(j).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 3, 1996, in subdivision (4), substituted "of the following" for "service" at the end of the introductory language, added the subdivision (4)a. designation, added "Service" at the beginning of subdivision (4)a., and added subdivision (4)b.

§ 89E-18. Prohibitions; unlawful acts.

CASE NOTES

Cited in State v. Clemmons, 111 N.C. App. 569, 433 S.E.2d 748 (1993).

§ 89E-22. Misdemeanor.

Any person who shall willfully practice publicly, or offer to practice publicly, geology for other natural or corporate persons in this State without being licensed in accordance with the provisions of this Chapter, or any person presenting or attempting to use as his own the license or the seal of another, or any person who shall give any false or forged evidence of any kind in obtaining a license, or any person who shall falsely impersonate any other licensee of like or different name, or any person who shall attempt to use an expired or revoked license or practice at any time during a period the Board has suspended or revoked the license, or any person who shall violate the provisions of this Chapter shall be guilty of a Class 2 misdemeanor. (1983 (Reg. Sess., 1984), c. 1074, s. 1; 1993, c. 539, s. 613; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 613, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

December 1, 1997

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1997 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

3862

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

December 1, 1997

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Michael F. Easley

Attorney General of North Carolina